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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 420

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRUEHAUF TRAILER COMPANY

No. 421

NATIONAL LABOR RELATIONS BOARD, PETITIONER

vs.

FRUEHAUF TRAILER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR CERTIORARI FILED SEPTEMBER 30, 1936
CERTIORARI GRANTED NOVEMBER 9, 1936

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In the United States Circuit Court of Appeals for the Sixth Circuit

OCTOBER TERM, 1935

Nos. 7291, 7297

FRUEHAUF TRAILER COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY, RESPONDENT

ON PETITIONS (CONSOLIDATED) FOR REVIEW (NO. 7291) AND ENFORCEMENT (NO. 7297) OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

TRANSCRIPT OF RECORD BEFORE NATIONAL LABOR RELATIONS BOARD

CERTIFICATE OF SECRETARY

Filed December 19, 1935, John W. Menzies, Clerk

The National Labor Relations Board, by its Secretary duly authorized by Rule and Regulation of the National Labor Relations Board dated the sixteenth day of October 1935, a copy of which Rule and Regulation is attached hereto and made a part hereof, does hereby certify that the docu-

ments attached hereto constitute a full and accurate transcript of the entire record in a consolidated proceeding had before said Board entitled "In the matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union, No. 19375", the same being Case No. C-2 before said Board, said transcript including the pleadings, testimony, and evidence upon which the order of the Board in said consolidated proceeding was entered, and including also the findings and order of the Board.

Fully enumerated, said documents attached hereto are as follows:

(1) Copy of Charge of United Automobile Workers Federal Labor Union, No. 19375, and certain employees, jointly, in constituent proceeding No. VII-C-1, verified October 3, 1935;

(2) Copy of Charge of United Automobile Workers Federal Labor Union, No. 19375, and an employee, jointly, in constituent proceeding No. VII-C-3, verified October 16, 1935.

(3) Copy of Complaint and Notice of Hearing issued by National Labor Relations Board in constituent proceeding No. VII-C-1, on October 23, 1935;

(4) Copy of Return of Service of Complaint and Notice of Hearing in constituent proceeding No. VII-C-1;

(5) Copy of Complaint and Notice of Hearing issued by National Labor Relations Board in constituent proceeding No. VII-C-3, on October 29, 1935;

(6) Copy of Return of Service of Complaint and Notice of Hearing in constituent proceeding No. VII-C-3;

(7) Copy of Order Designating Trial Examiner in proceeding No. VII-C-1;

(8) Copy of Order Designating Trial Examiner in proceeding No. VII-C-3;

(9) Copy of Order Consolidating Proceedings Nos. VII-C-1 and VII-C-3, and directing hearing before the National Labor Relations Board in place of the Trial Examiner theretofore designated, dated October 29, 1935;

(10) Copy of Motion to Dismiss Complaint in proceeding No. VII-C-1, dated October 30, 1935, and accompanying affidavit of Earl L. Vosler, verified October 30, 1935;

(11) Copy of Motion to Dismiss Complaint in proceeding No. VII-C-3, dated November 1, 1935;

(12) Copy of Order Overruling Motion to Dismiss complaint in proceeding No. VII-C-1, dated November 4, 1935;

(13) Copy of Answer in proceeding No. VII–C–1, verified October 30, 1935;

(14) Copy of Answer in proceeding No. VII–C–3, verified November 1, 1935;

(15) Stenographic Report of Hearing before National Labor Relations Board, November 6th to 8th, inclusive, including exhibits introduced in evidence, in proceedings Nos. VII–C–1 and VII–C–3;

(16) Copy of Stipulation of parties in proceedings VII–C–1 and VII–C–3, as to certain shipments of Fruehauf Trailer Company;

(17) Copy of Decision, Findings and Order of National Labor Relations Board, dated December 12, 1935.

In testimony whereof the Secretary of the National Labor Relations Board, being thereunto duly authorized, as aforesaid, has hereunto set his hand and affixed the Seal of the National Labor Relations Board, in the City of Washington, District of Columbia, this 17th day of December, 1935.

[SEAL] BENEDICT WOLF,
Secretary.

NATIONAL LABOR RELATIONS BOARD,
Washington, D. C.

By virtue of the authority vested in it by the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board hereby authorizes the Secretary to certify copies of all papers and documents which are a part of any of the files or records of the Board as may be necessary or desirable from time to time. This Rule and Regulation shall be effective upon its publication in the following manner, namely by the signing of the original by the members of the Board and the filing of said original with the Secretary of the Board, at whose office the original shall be available for public inspection and where copies of it shall be available to the public.

Signed at Washington, D. C., this 16th day of October, 1935.

(Signed) J. WARREN MADDEN, *Chairman.*
(Signed) EDWIN S. SMITH, *Member.*
(Signed) JNO. M. CARMODY, *Member.*

CHARGE (CASE NO. VII–C–1)

Filed October 4, 1935

Pursuant to Section 10 (b) of the National Labor Relations Act, United Automobile Workers Federal Labor Union No. 19375, comprising employes of Fruehauf Trailer Company, and Nick Trusch, Woolery Coonrod, Leonard Schaloux, William Milne, Arthur Beck, and William Weinmann, employes of said Company, hereby charge that their employer, the said Fruehauf Trailer Company, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (3), and (4) of said Act, as is shown by the following allegation of facts:

1. Fruehauf Trailer Company is a corporation organized under the laws of the State of Michigan, with its office and manufacturing plant in Detroit, Michigan; and is the employer of approximately six hundred (600) employes.

2. Respondent Company is engaged in the manufacture of trailers for trucks and automobiles and is engaged in commerce among the States in its manufacturing plant in Detroit in that its materials come from other States and are manufactured into trailers for shipment into other States; and it is otherwise engaged in interstate commerce.

3. The employes of said plant in Detroit are organized into United Automobile Workers Federal Labor Union No. 19375, affiliated with the American Federation of Labor.

4. The six (6) individuals named above as petitioners are members of said Union.

5. Respondent is guilty of a violation of the National Labor Relations Act, Section 8, subsections (1), (3) and (4) for the layoff or discharge of Nick Trusch, an employe of said respondent Company since February 1930, and discharged or laid off on, to wit, July 15, 1935, because he was a member of said Union and refused to resign said membership at the request of respondent.

6. Similarly, respondent is guilty of violation of the said Act in the discharge or layoff of Woolery Coonrod, an employe of said respondent Company since March 1927, and discharged or laid off on, to wit, July 5, 1935, because he was a member of said Union and refused to resign said membership at the request of the respondent.

7. Similarly, respondent is guilty of violation of the said Act in the discharge or layoff of Leonard Schaloux, an

employe of said respondent Company since June 1933, and discharged or laid off on, to wit, July 5, 1935, because he was a member of said Union and refused to resign said membership at the request of the respondent.

8. Similarly, respondent is guilty of violation of the said Act in the discharge or layoff of William Milne, an employe of the said respondent Company since June 1933, and discharged or laid off on, to wit, July 8, 1935, because he was a member of said Union and refused to resign said membership at the request of the respondent.

9. Similarly, respondent is guilty of violation of the said Act in the discharge or layoff of Arthur Beck, an employe of said respondent Company since November 1934, and discharged or laid off on, to wit, July 6, 1935, because he was a member of said Union and refused to resign said membership at the request of the respondent.

10. Similarly, respondent is guilty of violation of the said Act in the discharge or layoff of William Weinmann, an employe of said respondent Company since May 1933, and discharged or laid off on, to wit, July 15, 1935, because he was a member of said Union and refused to resign said membership at the request of the respondent.

11. Similarly, respondent is guilty of violation of the said Act in that it has forced a large number of its employes to resign their union membership and turn in their union books in order to retain their jobs.

12. By reason of the aforesaid unlawful acts of the said respondent Company, all of which took place at its place of business in Detroit, Michigan, said respondent has aroused and fostered a feeling of rivalry and bitterness among its employes, and as a result thereof there is a great spirit of unrest among all the employes which is constantly being stimulated by the said alleged defaults of the respondent and which tends to create and is creating conditions leading to industrial strife and unrest, which have the necessary effect of burdening or obstructing and affecting commerce.

13. Petitioners further charge that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Wherefore, petitioners pray that this Honorable Board issue and cause to be served upon Fruehauf Trailer Company its complaint stating the charges herein; that a hearing thereon at an early date and at a convenient place be ordered, at which petitioners, United Automobile Workers

Federal Labor Union No. 19375 and Nick Trusch, Woolery Coonrod, Leonard Schaloux, William Milne, Arthur Beck and William Weinmann may be allowed to intervene and to present testimony; and that after such hearing the Board state its findings of fact and cause to be issued and served upon said Fruehauf Trailer Company an order requiring it to cease and desist from violating Section 8, subsections (1), (3) and (4) of the National Labor Relations Act; and further requiring it to take such affirmative action, including reinstatement of said Nick Trusch, Woolery Coonrod, Leonard Schaloux, William Milne, Arthur Beck and William Weinmann with back pay, as will effectuate the policies of the said Act; and further requiring said Company to make reports from time to time to this Board showing the extent to which it has complied with said order, and for such other and further relief as the exigencies of the case may require.

CHARLTON OGBURN,
ARTHUR E. REYMAN,
Attorneys for Petitioners,
Union Trust Building, Washington, D. C.

WASHINGTON,
District of Columbia, ss:

On this 3rd day of October 1935, personally appeared before me, an officer duly authorized to administer oaths, Charlton Ogburn, who, being duly sworn, deposes and says that he is attorney for United Automobile Workers Federal Labor Union No. 19375, Nick Trusch, Woolery Coonrod, Leonard Schaloux, William Milne, Arthur Beck, and William Weinmann, the petitioners in the above entitled matter, that to the best of his knowledge and belief the facts therein alleged are true, and that he makes this affidavit in the absence of officers of the said Union and in the absence of the said six individuals.

(S.) CHARLTON OGBURN.

Sworn to before me this 3rd day of October 1935.

(S.) MARY G. KITE,
Notary Public.

My Commission expires August 10, 1939.

CHARGE (CASE NO. VII–C–3)

Filed October 17, 1935

Pursuant to Section 10 (b) of the National Labor Relations Act, United Automobile Workers Federal Labor Union No. 19375, comprising employes of Fruehauf Trailer Company, and J. L. Peterson, an employe of said Company, hereby charge that their employer, said Fruehauf Trailer Company, has engaged in and is engaging in unfair labor practices within the meaning of Section 8, subsections (1), (3), and (4) of said Act, as is shown by the following allegation of facts:

1. Fruehauf Trailer Company is a corporation organized under the laws of the State of Michigan, with its office and manufacturing plant in Detroit, Michigan; and is the employer of approximately six hundred (600) employes.

2. Respondent Company is engaged in the manufacture of trailers for trucks and automobiles and is engaged in commerce among the States in its manufacturing plant in Detroit in that its materials come from other States and are manufactured into trailers for shipment into other States; and it is otherwise engaged in interstate commerce.

3. The employes of said plant in Detroit are organized into United Automobile Workers Federal Labor Union No. 19375, affiliated with the American Federation of Labor.

4. J. L. Peterson is a member of said Union.

5. The said Fruehauf Trailer Company is guilty of a violation of the National Labor Relations Act, Section 8, subsections (1) and (3) for the lay-off or discharge of the said J. L. Peterson, an employe of said Respondent Company on, to wit, October 10, 1935, because he was a member of said Union and refused to resign said membership at the request of the said Company. The said J. L. Peterson has been an employe of the Company for eight and a half (8½) years until discharged, as aforesaid.

6. The said Company is guilty of a violation of the National Labor Relations Act, Section 8, subsection (4), in that it has discharged the said J. L. Peterson because he, as a member of United Automobile Workers Federal Labor Union No. 19375, heretofore filed a charge before this Board against the said Company.

7. By reason of the aforesaid unlawful acts of the said Respondent Company, all of which took place at its place of

business in Detroit, Michigan, said Respondent has aroused and fostered a feeling of rivalry and bitterness among its employes, and as a result thereof there is a great spirit of unrest among all the employes which is constantly being stimulated by the said alleged defaults of the Respondent and which tends to create and is creating conditions leading to industrial strife and unrest, which have the necessary effect of burdening or obstructing and affecting commerce.

9. Petitioners further charge that said unfair labor practices are unfair labor practices affecting commerce within the meaning of said Act.

Wherefore, Petitioners pray that this Honorable Board issue and cause to be served upon Fruehauf Trailer Company its complaint stating the charges herein; that a hearing thereon at an early date and at a convenient place be ordered, at which Petitioners, United Automobile Workers Federal Labor Union No. 19375 and J. L. Peterson may be allowed to intervene and to present testimony; and that after such hearing the Board state its findings of fact and cause to be issued and served upon said Fruehauf Trailer Company an order requiring it to cease and desist from violating Section 8, subsections (1), (3), and (4) of the National Labor Relations Act; and further requiring it to take such affirmative action, including reinstatement of said J. L. Peterson with back pay, as will effectuate the policies of the said Act; and further requiring said Company to make reports from time to time to this Board showing the extent to which it has complied with said order, and for such other and further relief as the exigencies of the case may require.

CHARLTON OGBURN,
ARTHUR E. REYMAN,
Attorneys for Petitioners,
Union Trust Building, Washington, D. C.

WASHINGTON
District of Columbia ss.:

On this 16th day of October 1935 personally appeared before me, an officer duly authorized to administer oaths, Arthur E. Reyman, who, being duly sworn, deposes and says that he is attorney for United Automobile Workers Federal Labor Union No. 19375 and J. L. Peterson, the Petitioners in the above entitled matter, that to the best of his knowledge and belief the facts therein alleged are true, and that

he makes this affidavit in the absence of officers of the said Union and in the absence of J. L. Peterson.

ARTHUR E. REYMAN.

Sworn to before me this 16th day of October 1935.

[SEAL] (S.) MARY G. KITE,
Notary Public.

My Commission expires August 10, 1939.

COMPLAINT AND NOTICE OF HEARING (CASE NO. VII–C–1)

Dated October 23, 1935

It having been charged by the United Automobile Workers Federal Labor Union No. 19375, 5259 Harding Avenue, Detroit, Michigan, that the Fruehauf Trailer Company, 10940 Harper Avenue, Detroit, Michigan, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Acting Regional Director for the Seventh Region, as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since February 21, 1918, a corporation organized under and existing by virtue of the laws of the State of Michigan, having its principal office and place of business in the City of Detroit, County of Wayne, and State of Michigan, and is now and has continuously been engaged in its plant in the City of Detroit, County of Wayne, and State of Michigan, hereinafter referred to as the Detroit plant, in the production, sale, and distribution of trailers, semi-trailers, carryalls, trailer parts and trailer accessories; the said respondent has maintained for several years last past and is now maintaining branch offices for the sale, distribution, assembly, service, and repair of trailers,

semi-trailers, carryalls, trailer parts and trailer accessories in Philadelphia, Pennsylvania, New York City, New York, Kansas City, Missouri, Los Angeles, California and Louisville, Kentucky, and other principal cities of the United States.

2. The respondent is the largest organization in the trailer industry and its aforesaid operations constitute about thirty-five per centum of the entire industry. In the course of its aforesaid operations it causes and has continuously caused over a long period of time and at all times hereinafter mentioned large quantities of materials consisting of lumber, steel, rubber tires, brake appliances and other accessories used in the production of its trailers, semi-trailers, carryalls, trailer parts, and trailer accessories to be purchased and transported in interstate commerce from and through states of the United States other than the State of Michigan to the Detroit plant in the State of Michigan, and causes and has continuously caused large quantities of the trailers, semi-trailers, carryalls, trailer parts and trailer accessories produced by it in the Detroit plant to be sold and transported in interstate commerce from the Detroit plant in the State of Michigan to, into and through states of the United States other than the State of Michigan, and maintains and has maintained the aforesaid branch offices throughout the United States for the sale and distribution of trailers, semi-trailers, carryalls, trailer parts, and trailer accessories produced by it and for the servicing and repair of said trailers, semi-trailers, and carryalls, all of the aforesaid constituting a continuous flow of commerce among the several states.

3. The respondent, by its officers and agents, on July 15, 1935, while engaged at the Detroit plant as described above, did discharge Nick Trusch, a carpenter, employed by the respondent at the Detroit plant, and has at all times since said date refused to reinstate said Nick Trusch.

4. The respondent discharged and refuses to reinstate said Nick Trusch as above set forth for the reason that said Nick Trusch joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

5. By its discharge of said Nick Trusch and its refusal to reinstate said Nick Trusch as above set forth, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in

the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

6. By its discharge of said Nick Trusch and its refusal to reinstate said Nick Trusch as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Nick Trusch and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

7. The respondent, by its officers and agents, on July 5, 1935, while engaged at the Detroit plant as described above, did discharge Woolery Coonrod, a fitter, employed by the respondent at the Detroit Plant, and has at all times since said date refused to reinstate said Woolery Coonrod.

8. The respondent discharged and refuses to reinstate said Woolery Coonrod as above set forth for the reason that said Woolery Coonrod joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

9. By its discharge of said Woolery Coonrod and its refusal to reinstate said Woolery Coonrod as above set forth, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

10. By its discharge of said Woolery Coonrod and its refusal to reinstate said Woolery Coonrod as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Woolery Coonrod and did discourage and is discouraging membership in the United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

11. The respondent, by its officers and agents, on July 5, 1935, while engaged at the Detroit plant as described above,

did discharge Leonard Chaloux, a rivet puncher, employed by the respondent at the Detroit plant, and has at all times since said date refused to reinstate said Leonard Chaloux.

12. The respondent discharged and refuses to reinstate said Leonard Chaloux as above set forth for the reason that said Leonard Chaloux joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

13. By its discharge of said Leonard Chaloux and its refusal to reinstate said Leonard Chaloux as above set forth, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

14. By its discharge of said Leonard Chaloux and its refusal to reinstate said Leonard Chaloux as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Leonard Chaloux and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

15. The respondent, by its officers and agents, on July 8, 1935, while engaged at the Detroit plant as described above, did discharge William Milne, a lay-out worker, employed by the respondent at the Detroit plant, and has at all times since said date refused to reinstate said William Milne.

16. The respondent discharged and refuses to reinstate said William Milne as above set forth for the reason that said William Milne joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

17. By its discharge of said William Milne and its refusal to reinstate said William Milne as above set forth, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act,

and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

18. By its discharge of said William Milne and its refusal to reinstate said William Milne as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said William Milne and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

19. The respondent, by its officers and agents, on July 6, 1935, while engaged at the Detroit plant as described above, did discharge Arthur Beck, a carpenter, employed by the respondent at the Detroit plant, and has at all times since said date refused to reinstate said Arthur Beck.

20. The respondent discharged and refuses to reinstate said Arthur Beck as above set forth for the reason that said Arthur Beck joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

21. By its discharge of said Arthur Beck and its refusal to reinstate said Arthur Beck as above set forth, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

22. By its discharge of said Arthur Beck and its refusal to reinstate said Arthur Beck as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said Arthur Beck and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

23. The respondent, by its officers and agents, on July 15, 1935, while engaged at the Detroit plant as described above, did discharge William Weinmann, a carpenter, employed by

the respondent at the Detroit plant, and has at all times since said date refused to reinstate said William Weinmann.

24. The respondent discharged and refuses to reinstate said William Weinmann as above set forth for the reason that said William Weinmann joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

25. By its discharge of said William Weinmann and its refusal to reinstate said William Weinmann as above set forth, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

26. By its discharge of said William Weinmann and its refusal to reinstate said William Weinmann as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said William Weinmann and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

27. The respondent, by its officers and agents, has on repeated occasions since July 5, 1935, the exact dates being well known to the respondent, while engaged at the Detroit plant as described above, threatened to discharge divers employees, whose names are to the respondent well known, unless said employees resigned their membership in the United Automobile Workers Federal Labor Union No. 19375, and thereby caused divers employees to resign their membership in said Union.

28. The respondent threatened to discharge said divers employees as in the next preceding paragraph described for the reason that said employees had joined and assisted a labor organization known as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

29. By threatening to discharge said divers employees unless they resigned their membership in said Union and

thereby causing divers employees to resign their membership in said Union, as above set forth, the respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of said Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

30. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

31. The aforesaid acts of respondent, as described in Paragraphs 3 to 30 above, constitute unfair labor practices affecting commerce, within the meaning of Section 8, Subdivisions (1) and (3) and Section 2, Subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board on the 23rd day of October, 1935, issues its complaint against the Fruehauf Trailer Company, respondent herein.

NOTICE OF HEARING

Please take notice that on the 6th day of November 1935 at 10:00 o'clock in the forenoon, at 722 Federal Building, Detroit, Michigan, a hearing will be conducted before the National Labor Relations Board, by its agent, William R. Walsh, designated in accordance with said Rules and Regulations, Series 1, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Seventh Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your atten-

tion is particularly directed to Article II of said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this its complaint and notice of hearing to be signed by the Acting Regional Director for the Seventh Region on the 23rd day of October, 1935.

FRANK H. BOWEN,
Acting Regional Director for the Seventh Region.

RETURN OF SERVICE (CASE NO. VII–C–1)

I hereby certify that, being a person over 18 years of age, I duly served a copy of the within complaint—

√ in person.
by registered mail.
by telegraph.
by leaving copy at principal office or place of business, to wit:

on the person named herein on R. W. Jacobs, Asst. Treas., at 5 p. m., Oct. 23rd, 1935.

FRANK H. BOWEN,
Acting Director.

OCTOBER 29, 1935.

FRUEHAUF TRAILER COMPANY,
1090 Harper Avenue, Detroit, Michigan.

GENTLEMEN: I hand you herewith complaint and notice of hearing, together with copy of Rules and Regulations, Series 1, in the matter of the Fruehauf Trailer Company and United Auto Workers Federal Labor Union No. 19875.

Hearing has been set for 10:00 a. m., November 6th, in room 722, Federal Building, Detroit, Michigan.

Yours truly,

FRANK H. BOWEN,
Acting Director.

FHB:AMC.
Registered Mail.
Special Delivery.
(Receipt for registered article #11818 omitted.)
(Original return receipt signed by D. E. Berger, agent of Fruehauf Trailer Company omitted.)

COMPLAINT AND NOTICE OF HEARING (CASE NO. VII–C–3)

Dated October 29, 1935

It having been charged by the United Automobile Workers Federal Labor Union No. 19375, 5259 Harding Avenue, Detroit, Michigan, that the Fruehauf Trailer Company, 10940 Harper Avenue, Detroit, Michigan, hereinafter called the respondent, has engaged in and is now engaging in certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, approved July 5, 1935, the National Labor Relations Board, by the Acting Regional Director for the Seventh Region, as agent of the National Labor Relations Board, designated by the National Labor Relations Board Rules and Regulations, Series 1, Article IV, Section 1, hereby alleges the following:

1. The respondent is and has been since February 21, 1918, a corporation organized under and existing by virtue of the laws of the State of Michigan, having the principal office and place of business in the City of Detroit, County of Wayne, and State of Michigan, and is now and has con-

tinuously been engaged in its plant in the City of Detroit, County of Wayne, and State of Michigan, hereinafter referred to as the Detroit plant, in the production, sale, and distribution of trailers, semi-trailers, carryalls, trailer parts, and trailer accessories; the said respondent has maintained for several years last past and is now maintaining branch offices for the sale, distribution, assembly, service, and repair of trailers, semi-trailers, carryalls, trailer parts, and trailer accessories in Philadelphia, Pennsylvania, New York City, New York, Kansas City, Missouri, Los Angeles, California, and Louisville, Kentucky, and other principal cities of the United States.

2. The respondent is the largest organization in the trailer industry and its aforesaid operations constitute about thirty-five per centum of the entire industry. In the course of its aforesaid operations it causes and has continuously caused over a long period of time and at all times hereinafter mentioned large quantities of materials consisting of lumber, steel, rubber tires, brake appliances, and other accessories used in the production of its trailers, semi-trailers, carryalls, trailer parts, and trailer accessories to be purchased and transported in interstate commerce from and through states of the United States other than the State of Michigan to the Detroit plant in the State of Michigan, and causes and has continuously caused large quantities of the trailers, semi-trailers, carryalls, trailer parts, and trailer accessories produced by it in the Detroit plant to be sold and transported in interstate commerce from the Detroit plant in the State of Michigan, to, into, and through states of the United States other than the State of Michigan, and maintains and has maintained the aforesaid branch offices throughout the United States for the sale and distribution of trailers, semi-trailers, carryalls, trailer parts, and trailer accessories produced by it and for the servicing and repair of said trailers, semi-trailers, and carryalls, all of the aforesaid constituting a continuous flow of commerce among the several states.

3. The respondent, by its officers and agents, on October 10, 1936, while engaged at the Detroit plant as described above, did discharge J. L. Peterson, a sub-foreman, employed by the respondent at the Detroit plant, and has at all times since said date refused to reinstate said J. L. Peterson.

4. The respondent discharged and refuses to reinstate said J. L. Peterson as above set forth for the reason that said J. L. Peterson joined and assisted a labor organization known

as the United Automobile Workers Federal Labor Union No. 19375 and engaged in concerted activity with other employees for the purpose of collective bargaining and other mutual aid and protection.

5. By its discharge of said J. L. Peterson and its refusal to reinstate said J. L. Peterson as above set forth, the respondent did interfere with, restrain, and coerce, and is interfering with, restraining and coercing its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (1) of said Act.

6. By its discharge of said J. L. Peterson and its refusal to reinstate said J. L. Peterson as above set forth, the respondent did discriminate and is discriminating in regard to the hire and tenure of employment of said J. L. Peterson and did discourage and is discouraging membership in United Automobile Workers Federal Labor Union No. 19375, and did thereby engage in and is thereby engaging in an unfair labor practice within the meaning of Section 8, Subdivision (3) of said Act.

7. The aforesaid unfair labor practices occur in commerce among the several states, and on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof.

8. The aforesaid acts of respondent, as described in Paragraphs 3 to 7 above, constitute unfair labor practices affecting commerce, within the meaning of Section 8, Subdivision (1) and (3) and Section 2, Subdivisions (6) and (7), of said Act.

Wherefore, the National Labor Relations Board on the 29th day of October, 1935, issues its complaint against the Fruehauf Trailer Company, respondent herein.

NOTICE OF HEARING

Please take notice that on the 6th day of November, 1935, at 10:00 o'clock in the forenoon, at 722 Federal Building, Detroit, Michigan, a hearing will be conducted before the National Labor Relations Board, by its agent, William R. Walsh, designated in accordance with said Rules and Regu-

lations, Series 1, Article IV, Section 3, and Article II, Section 22, on the allegations set forth in the complaint attached hereto, at which time and place you will have the right to appear, in person or otherwise, and give testimony.

You are further notified that you have the right to file with the Regional Director for the Seventh Region, acting in this matter as the agent of the National Labor Relations Board, an answer to the complaint attached hereto, within five days from the date of service thereof.

Enclosed herewith for your information is a copy of Rules and Regulations, Series 1, made and published by the National Labor Relations Board pursuant to authority granted in the National Labor Relations Act. Your attention is particularly directed to Article II of said Rules and Regulations.

In witness whereof the National Labor Relations Board has caused this, its complaint and notice of hearing to be signed by the Acting Regional Director for the Seventh Region on the 29th day of October, 1935.

FRANK H. BOWEN,
Acting Regional Director for the Seventh Region.

RETURN OF SERVICE (CASE NO. VII–C–3)

I hereby certify that, being a person over 18 years of age, I duly served a copy of the within complaint—

in person.
√ by registered mail.
by telegraph.
by leaving copy at principal office or place of business, to wit.

on the person named herein on Oct. 29th, 1935, D. E. Berger.

FRANK H. BOWEN,
Acting Director.

ORDER DESIGNATING TRIAL EXAMINER (CASE NO. VII–C–1)

Dated October 16, 1935

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of October 1935.

Present: J. Warren Madden, Chairman; Edwin S. Smith.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Seventh Region that a proceeding in respect thereto should be instituted, and the Board having considered the matter and being advised in the premises,

It is hereby ordered that William R. Walsh act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

[SEAL] BENEDICT WOLF,
Secretary.

ORDER DESIGNATING TRIAL EXAMINER (CASE NO. VII–C–3)

Dated October 16, 1935

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 16th day of October 1935.

Present: J. Warren Madden, Chairman; Edwin S. Smith.

A charge having been filed in this matter, and it having appeared to the Regional Director of the Seventh Region that a proceeding in respect thereto should be instituted, and

the Board having considered the matter and being advised in the premises,

It is hereby ordered that William R. Walsh act as Trial Examiner in the above case and perform all the duties and exercise all the powers granted to trial examiners under the Rules and Regulations—Series 1 of the National Labor Relations Board.

By direction of the Board:

[SEAL] BENEDICT WOLF,
Secretary.

ORDER CONSOLIDATING PROCEEDINGS (NOS. VII–C–1 AND VII–C–3)

Dated October 29, 1935

At a regular meeting of the National Labor Relations Board, held at its office in the City of Washington, D. C., on the 29th day of October 1935.

Present: J. Warren Madden, Chairman; John M. Carmody; Edwin S. Smith.

A Trial Examiner having been designated and a hearing having been ordered in each of the above matters, and it being deemed by the National Labor Relations Board necessary in order to effectuate the purposes of the National Labor Relations Act that the above entitled matters be consolidated and transferred to and continued before it:

It is hereby ordered, in accordance with the National Labor Relations Board Rules and Regulations, Series 1 (General Rules and Regulations) Article II, Section 35, that the aforesaid matters be and they hereby are transferred to and continued before it, and that in the place of William R. Walsh, heretofore designated by the National Labor Re-

lations Board as its agent to conduct a hearing in each of the aforesaid matters, there be and hereby is designated the National Labor Relations Board, or one or more of its members, to conduct the hearing in said matters.

It is further ordered that the aforesaid matters be and they hereby are consolidated, and that the hearing of them, so consolidated, shall take place at the time and place heretofore fixed.

By direction of the Board:

[SEAL]

BENEDICT WOLF,
Executive Secretary.

MOTION TO DISMISS COMPLAINT (CASE NO. VII–C–1)

Filed October 31, 1935

Now comes Fruehauf Trailer Company, a Michigan corporation, by Stevenson, Butzel, Eaman & Long, its attorneys, appearing specially for the purpose of this Motion to Dismiss for lack of jurisdiction of the National Labor Relations Board, and moves to dismiss the complaint of said National Labor Relations Board filed in the above matter for the following reasons:

1. The Act of Congress, Public, No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, pursuant to which the National Labor Relations Board was created, is unconstitutional and void in its application to the Respondent Fruehauf Trailer Company, in that said Act purports to authorize said Board to assume jurisdiction, and said Board by virtue of said complaint is attempting to assume jurisdiction, over matters not subject to the laws of the United States of America, and said Act contravenes

Article I, Section 1, of, and the First, Fifth, Seventh, and Tenth Amendments to, the Constitution of the United States of America.

2. All of the Fruehauf Trailer Company's manufacturing plants are located in, and all of its manufacturing operations are conducted in, the City of Detroit, State of Michigan. The employees covered by the complaint of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to its manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board.

3. National Labor Relations Board has no jurisdiction over the subject matter and of the proceedings described in said complaint, and has no jurisdiction to make any orders thereupon. National Labor Relations Board has no jurisdiction over Fruehauf Trailer Company.

4. The Act of Congress, Public, No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3, and 5 of Section 8 of said Act, severally, violate and contravene the Fifth Amendment to the Constitution of the United States in that they deprive Fruehauf Trailer Company of its property without due process of law, and deprive Fruehauf Trailer Company of the right and freedom to enter into contracts of employment with employees in the operation of its business guaranteed to it by the Constitution of the United States.

5. The Act of Congress, Public No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and particularly Section 10 of said Act, violate and contravene the Fifth Amendment to the Constitution of the United States and deprive the Fruehauf Trailer Company of its property without due process of law, in that the proceedings prescribed by said Act and the provisions in said Act for the presentation and admission of

evidence at such proceeding is not in conformity with the rules of evidence prevailing in courts of law or equity, and denies to Fruehauf Trailer Company the safeguards of due process of law guaranteed to it by the Constitution of the United States.

6. The Act of Congress, Public No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, and the proceedings of the National Labor Relations Board thereunder herein, violate and contravene the Seventh Amendment to the Constitution of the United States, in that said Act attempts to empower said National Labor Relations Board, and said National Labor Relations Board is presuming to act in this proceeding, involving amounts in excess of the Constitutional limitation, so as to deprive the Fruehauf Trailer Company of its right to have the facts covered by the complaint tried and determined by a jury in the manner guaranteed under the Seventh Amendment to the Constitution of the United States.

7. The Act of Congress, Public, No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3 and 5 of Section 8 of said Act, severally, violate and contravene the First Amendment to the Constitution of the United States, in that they would deprive the Fruehauf Trailer Company, and deny to it, the right to freedom of speech guaranteed to it under the First Amendment to the Constitution of the United States.

This motion is based upon the files and records in this proceeding and upon the affidavit of Earl L. Vosler, Vice-President of the Fruehauf Trailer Company, hereto annexed and made a part hereof.

FRUEHAUF TRAILER COMPANY,
By STEVENSON BUTZEL EAMON AND LONG,
Its Attorneys, Appearing Specially for the Purpose of
this Motion to Dismiss for Lack of Jurisdiction.

Business Address: 2288 National Bank Bldg., Detroit, Michigan.

Dated: October 30th, 1935.

VICTOR W. KLEIN,
Of Counsel.

STATE OF MICHIGAN,
County of Wayne, ss:

EARL L. VOSLER, being first duly sworn, deposes and says that he is Vice-President of the Fruehauf Trailer Company,

Respondent in the above proceedings, and that he is in charge of the manufacturing and production operations of said Corporation.

Deponent further says that Fruehauf Trailer Company, the Respondent herein, was for many years prior and now is a manufacturer of trailers, semi-trailers, carryalls, parts and accessories therefor; that it conducts and carries on its said manufacturing operations exclusively in the plant of the Respondent, Freuhauf Trailer Company, in the City of Detroit, County of Wayne, State of Michigan, and that it has no other plant and does not conduct manufacturing operations in any other plant outside of Detroit. Deponent further says that Respondent's manufacturing operations consist of the transformation of raw and unfinished materials through an involved and intricate manufacturing process at its plant in the City of Detroit into a completely different form than when said materials were delivered to said plant, to wit, finished trailers.

Deponent further says that whatever raw, unfinished, and other materials required in Respondent's manufacturing operations which were purchased by Respondent, were purchased at the plant and delivered to the plant at Detroit, Michigan, and there came to a complete rest prior to manufacturing operations, and became comingled with other parts of Respondent's raw and unfinished material inventory, and remained at the plant from one month to four months and upwards, and acquired a situs in the City of Detroit, Wayne County, Michigan, and such materials in its plant on assessment day were subjected to the local personal property tax imposed by the City of Detroit, the County of Wayne, and State of Michigan.

Deponent further says that Respondent's manufacturing operations were and are distinct, separate, and apart from the purchase by it and the delivery to it at its plant in Detroit of various materials, that said materials had acquired a situs in Detroit and come to a complete rest at Respondent's plant in Detroit prior to manufacturing operations. Deponent further says that Respondent's manufacturing operations of transforming and fashioning said raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, finished trailers, semi-trailers, carryalls, trailer parts, and trailer accessories, exclusively conducted at its plant at Detroit, Michigan, were local in character, and did not and

do not constitute the carrying on of interstate commerce, and that said manufacturing operation was and is complete, separate, and distinct from the sale or shipment from the plant at Detroit in and out of the State of Michigan succeeding the manufacturing operation. Deponent further states that shipment of materials to Respondent's plant in the City of Detroit, Michigan, and shipments of finished and completely manufactured products to points out of the state after involved and intricate manufacturing operations were and are separate and distinct from said manufacturing operations and were not in a continuous flow in interstate commerce.

Deponent further states that the employees covered by the complaint of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to its manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board.

EARL L. VOSLER.

Subscribed and sworn to before me this 30th day of October, A. D. 1935.

[SEAL] VERONICA B. WALKER,
Notary Public, Wayne County, Michigan.

My commission expires December 8, 1936.

ORDER OVERRULING MOTION TO DISMISS (CASE NO. VII–C–1)

Dated November 4, 1935

The respondent Fruehauf Trailer Company, by its attorneys, appearing specially for the purpose, having moved to dismiss the complaint in the above matter on the grounds that the National Labor Relations Board has no jurisdiction of the person of the respondent and no jurisdiction of the subject matter, and said motion having been duly considered and the Board being sufficiently advised in the premises, and it appearing to the National Labor Relations Board that the aforesaid motion is without merit.

It is hereby ordered that the aforesaid motion of respondent be, and it hereby is, overruled this 4th day of November 1935.

(S.) J. WARREN MADDEN,
Chairman.

(S.) JOHN M. CARMODY,
Member.

(S.) EDWIN S. SMITH,
Member.

MOTION TO DISMISS COMPLAINT (CASE NO. VII–C–3)

Filed November 5, 1935

Now comes Fruehauf Trailer Company, a Michigan corporation, by Stevenson, Butzel, Eaman & Long, its attorneys, appearing specially for the purpose of this Motion to Dismiss for lack of jurisdiction of the National Labor Relations Board, and moves to dismiss the complaint of said

National Labor Relations Board filed in the above matter for the reasons set forth in the Motion to Dismiss in the proceeding Before the National Labor Relations Board entitled in the matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375, Seventh Region, Case No. VII–C–1, which motion is incorporated herein by reference and made a part hereof with the same force and effect as though set out at length herein, in accordance with the stipulation of attorneys for the National Labor Relations Board.

FRUEHAUF TRAILER COMPANY,
By STEVENSON, BUTZEL, EAMAN, LONG,
Its Attorneys, Appearing Specially for the Purpose of this Motion to Dismiss for Lack of Jurisdiction.

Business Address: 2288 National Bank Bldg., Detroit, Michigan.

Dated: November 1st, 1935.

VICTOR W. KLEIN,
Of Counsel.

ANSWER (CASE NO. VII–C–1)

Filed November 5, 1935

To the NATIONAL LABOR RELATIONS BOARD:

Now comes Fruehauf Trailer Company, a Michigan corporation, reserving all jurisdictional rights and the benefit of the Motion to Dismiss heretofore filed and renewing and relying upon said Motion herein with the same force and effect as though set out at full length herein, and except-

ing and objecting to the jurisdiction of the National Labor Relations Board, in answer to the complaint filed in the above proceedings by the National Labor Relations Board, now and at all times denying the right of the Complainant to assert any claim thereunder concerning this Respondent, and at all times saving and reserving unto itself all manner of benefit and advantage of exceptions which can or may be taken of the many errors, uncertainties, insufficiencies and other imperfections contained in the said complaint, and says:

1. Answering paragraph 1 of said complaint, Respondent, Fruehauf Trailer Company, admits that since February 21st, 1918, it has been a corporation, and that it was organized and existed under and by virtue of the laws of the State of Michigan, with its principal office and place of business at Detroit, Wayne County, Michigan. Further answering said paragraph, Respondent shows that Fruehauf Trailer Company was the successor to the wagon works business and black-smith shop originally organized by August C. Fruehauf in 1897, which business was carried on and conducted in the City of Detroit.

Further answering paragraph 1 of said complaint, Respondent, Fruehauf Trailer Company, admits that it is now and has continuously been engaged in the manufacture of trailers, semi-trailers, carryalls, trailer parts, and trailer accessories, and in the sale and distribution of said products at its factory and office in the City of Detroit, County of Wayne, State of Michigan. Further answering said paragraph, Respondent, Fruehauf Trailer Company, admits that for several years past it has maintained and is now maintaining branch offices for the sale, distribution, service and repair of trailers, semi-trailers, carryalls, trailer parts and trailer accessories in the City of Philadelphia, Pa., New York City, N. Y., and Kansas City, Mo., and in other principal cities in the United States, but denies that it maintained any offices or plants or branches for assembling of trailers in any of said cities, or that it conducted assembly operations or plants in any city outside of its plant and factory at the City of Detroit, Michigan. Further answering said paragraph, Respondent denies that it has maintained in the past or is now maintaining branch offices in the City of Los Angeles, Calif., or Louisville, Ky.

2. Answering paragraph 2 of said complaint, Respondent, Fruehauf Trailer Company, believes the allegation that

it is the largest organization in the trailer industry to be true, but says that it is not advised as to what percentage its operations bear to the operations of the entire trailer industry.

Further answering paragraph 2 of said complaint, Respondent shows that its business is that of a manufacturer of trailers, semi-trailers, carryalls, parts, and accessories therefor; that it conducts and carries on its said manufacturing operations exclusively in the plant of Respondent, Fruehauf Trailer Company, in the City of Detroit, County of Wayne, State of Michigan, and that it has no other plant and does not conduct manufacturing operations in any other plant outside of Detroit. Respondent shows that its manufacturing operations consist of the transformation of raw and unfinished materials through an involved and intricate manufacturing process at its plant in the City of Detroit into a completely different form than when said materials were delivered to said plant, to wit, finished trailers.

Respondent, Fruehauf Trailer Company, further answering paragraph 2 shows that prior to said manufacturing operations that it purchased through its purchasing department at the plant in Detroit raw materials and unfinished cast materials which required various manufacturing operations thereupon as aforesaid, and other materials which were to be used by Respondent in its manufacturing and assembling operations in the construction of trailers and other products manufactured by it, and admits that a portion of said raw, unfinished and other materials were shipped from and through states of the United States other than the State of Michigan to the Detroit plant. Further answering said paragraph, Respondent shows that when various raw, unfinished and other materials were delivered to it at its plant in the City of Detroit, whether said materials were shipped in from out of the State of Michigan or not, that said materials came to a complete rest at its plant in the City of Detroit prior to manufacturing operations and became comingled with other parts of its raw and unfinished material inventory, and remained at the plant from one month to four months and upwards, and acquired a situs in the City of Detroit, Wayne County, Michigan, and such materials in its plant on assessment day were subjected to the local personal property tax imposed by the City of Detroit, the County of Wayne, and State of Michigan.

Further answering said paragraph, Respondent denies that said materials were carried through in a continuous flow in interstate commerce through its manufacturing operations and in shipments of the finished trailers, semi-trailers, carryalls, and parts from the plant in Detroit, and through other states in the United States, but to the contrary shows that its manufacturing operations were and are distinct, separate, and apart from the purchase by it and the delivery to it at its plant in Detroit of various materials, that said materials had acquired a situs in Detroit and come to a complete rest at its plant in Detroit prior to its aforesaid manufacturing operations. Respondent further shows that its manufacturing operations of transforming and fashioning said raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, finished trailers, semi-trailers, carryalls, trailer parts, and trailer accessories, exclusively conducted at its plant at Detroit, Michigan, were local in character, and did not and do not constitute the carrying on of interstate commerce, and that said manufacturing operation was and is complete, separate, and distinct from the sale or shipment from the plant at Detroit in and out of the State of Michigan succeeding the manufacturing operation. Respondent further shows that shipments of materials to its plant in the City of Detroit, Michigan, and shipments of finished and completely manufactured products to points out of the state after involved and intricate manufacturing operations were and are separate and distinct from said manufacturing operations and were not in a continuous flow in interstate commerce.

3. Answering paragraph 3 of said complaint, Respondent admits that it discharged Nick Trusch, a carpenter then employed by it at the Detroit plant, and denies that it has at all times since that date, to wit, July 15th, 1935, refused to reemploy the said Nick Trusch, but shows that, according to the records of the Respondent, that he has never made application for reemployment.

4. Answering paragraph 4 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

5. Answering paragraph 5 of said complaint, Respondent Fruehauf Trailer Company, denies each and every allegation therein contained.

6. Answering paragraph 6 of said complaint, Respondent denies each and every allegation therein contained.

7. Answering paragraph 7 of said complaint, Respondent admits that it did discharge Woolery Coonrod, a fitter employed by it at its Detroit plant, and has at all times since that date refused to reemploy him, but shows on information and belief that the National Labor Relations Act did not become effective until after the discharge of said employee, and for that reason in addition to the other grounds herein set forth has no application thereto.

8. Answering paragraph 8 of said complaint, Respondent denies each and every allegation therein contained.

9. Answering paragraph 9 of said complaint, Respondent denies each and every allegation therein contained.

10. Answering paragraph 10 of said complaint, Respondent denies each and every allegation therein contained.

11. Answering paragraph 11 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every Leonard Chaloux on July 5th, 1935, but denies that he has since that time applied for reemployment, but shows on information and belief that the National Labor Relations Act did not become effective until after the discharge of said employee, and for that reason in addition to the other grounds herein set forth has no application thereto.

12. Answering paragraph 12 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

13. Answering paragraph 13 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

14. Answering paragraph 14 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

15. Answering paragraph 15 of said complaint, Respondent, Fruehauf Trailer Company, admits that it discharged William Milne on July 8th, 1935, but denies that he has since that time applied for reemployment.

16. Answering paragraph 16 of said complaint, Respondent, Fruehauf Trailer Company denies each and every allegation therein contained.

17. Answering paragraph 17 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

18. Answering paragraph 18 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

19. Answering paragraph 19 of said complaint, Respondent, Fruehauf Trailer Company, admits that it discharged Arthur Beck on July 6th, 1935, but denies that he has since that time applied for reemployment.

20. Answering paragraph 20 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

21. Answering paragraph 21 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

22. Answering paragraph 22 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

23. Answering paragraph 23 of said complaint, Respondent, Fruehauf Trailer Company, admits that it discharged William Weinmann on July 15th, 1935, but avers according to Respondent's records that at no time since has he applied for reemployment.

24. Answering paragraph 24 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

25. Answering paragraph 25 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

26. Answering paragraph 26 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

27. Answering paragraph 27 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

28. Answering paragraph 28 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

29. Answering paragraph 29 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

Further answering paragraphs 3 to 29 inclusive Respondent, Fruehauf Trailer Company, shows that from the period of June 25th, 1935, to July 21st, 1935, because of a then decided falling off of its business and the consequent reducing of its manufacturing operations that seventy-two (72) production and manufacturing employees were laid off or dismissed, including the six (6) employees specifically named in the complaint. Further answering said paragraphs of

the complaint, Respondent, Fruehauf Trailer Company, shows that wherever said men were laid off or otherwise dismissed, including those men named in the complaint, that said Respondent, Fruehauf Trailer Company, reduced its force in such a manner as to retain those who in its judgment were the most efficient and capable employees and with a view of continuing the employees who could and would most efficiently perform their work, who showed the greatest interest in their work, who appeared to have the best interests of Respondent and the success of its operations at heart, and who would most harmoniously work with others in the various production departments to the end that its production and manufacture of trailers would carry on successfully and profitably and would inure to the benefit of the Respondent and to the employees of the Respondent who would benefit by the continued and successful operation of the business of Respondent by a continued and steady employment.

Further answering said paragraphs of said complaint, Respondent, while denying discharging said employees because of membership in the United Automobile Workers Federal Labor Union, nevertheless shows that the Respondent as an employer in the operation of a large business and in order to protect its investment therein, has the full and unqualified right to discontinue the employment of any of its employees for any reason it may in its discretion determine beneficial to its business, and that it may in the operation and conduct of its business employ or refuse to employ persons as it may deem to the best interests of its business and the operation thereof, and in so far as Act of Congress, Public, No. 198 of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935 abrogates this right it is contrary to and in violation of the Fifth Amendment to the Constitution of the United States.

30. Answering paragraph 30 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation of said paragraph. Further answering said paragraph 30, Respondent shows that the employees covered by the complaint of the National Labor Relations Board hereunder were employed in the production and manufactuing operations of the Fruehauf Trailer Company at Detroit, Michigan, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate com-

merce, this relationship between such employees and Fruehauf Trailer Company being incident to its manufacturing operations, which operations are local in character.

31. Answering paragraph 31 of said complaint, Respondent, Fruehauf Trailer Company denies each and every allegation therein contained.

Wherefore, the complaint of the National Labor Relations Board against the Fruehauf Trailer Company, Respondent herein, should be dismissed.

FRUEHAUF TRAILER COMPANY,
By EARL L. VOSLER,
Its Vice-President.

STEVENSON, BUTZEL, EAMAN & LONG,
Attorneys for Respondent,
2288 National Bank Bldg., Detroit, Michigan.

Dated: October 30th, 1935.

VICTOR W. KLEIN,
Of Counsel.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 30 day of October, A. D. 1935, before me, a Notary Public in and for said County, personally appeared Earl L. Vosler, who being by me duly sworn, says that he is Vice-President of Fruehauf Trailer Company; that he signed said Answer in behalf of said Company and is duly authorized so to do, and that he has read the Answer by him so signed, knows well the contents thereof, and that the statements therein contained are true of his own knowledge, except such as are made upon information and belief, and those he verily believes to be true.

[SEAL]

VERONICA B. WALKER,
Notary Public, Wayne County, Michigan.

My commission expires Dec. 8, 1936.

ANSWER (CASE NO. VII–C–3)

Filed November 7, 1935

To the NATIONAL LABOR RELATIONS BOARD:

Now comes Fruehauf Trailer Company, a Michigan corporation, reserving all jurisdictional rights and the benefit of the Motion to Dismiss heretofore filed and renewing and relying upon said Motion herein with the same force and effect as though set out at full length herein, and excepting and objecting to the jurisdiction of the National Labor Relations Board, in answer to the complaint filed in the above proceedings by the National Labor Relations Board, now and at all times denying the right of the Complainant to assert any claim thereunder concerning this Respondent, and at all times saving and reserving unto itself all manner of benefit and advantage of exceptions which can or may be taken of the many errors, uncertainties, insufficiencies, and other imperfections contained in the said complaint, and says:

1. Answering paragraphs 1 and 2 of said complaint, Respondent, Fruehauf Trailer Company, hereby adopts paragraphs 1 and 2 of its answer filed in the proceeding entitled Before the National Labor Relations Board, Seventh Region, In the Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19875, Case No. VII–C–1, as answer thereto, which paragraphs 1 and 2 of said answer are incorporated herein with the same force and effect as though set out at full length herein.

2. Answering paragraph 3 of said complaint, Respondent admits that it discharged J. L. Peterson on October 10th, 1935, and denies that it has at all times since that date refused to reemploy the said J. L. Peterson, but shows that, according to the records of the Respondent, that he has never made application for reemployment.

3. Answering paragraph 4 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

4. Answering paragraph 5 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

5. Answering paragraph 6 of said complaint, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained.

Further answering paragraphs 3, 4, 5, and 6, the Respondent, Fruehauf Trailer Company, does adopt and incorporate herein by reference paragraph 29 of its answer in the proceeding entitled Before the National Labor Relations Board, Seventh Region, In the Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375, Case No. VII–C–1, with the proviso that instead of the reference as in said paragraph being 3 to 29, inclusive, of said complaint VII–C–1, that here it shall be in further answer to paragraphs 3 to 6, inclusive, and shall refer to Peterson as well as to the six employees named.

6. Answering paragraph 7 and 8, Respondent, Fruehauf Trailer Company, denies each and every allegation therein contained, and in further answer to paragraph 7 adopts and incorporates herein by reference its answer to paragraph 30 in the proceeding entitled Before the National Labor Relations Board, Seventh Region, In the Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union No. 19375, Case No. VII–C–1, said paragraph also having application to the employee covered by this complaint.

The adoption and incorporation by reference to certain parts of the answer of the complaint Before the National Labor Relations Board in case No. VII–C–1 is in accordance with the stipulation with the attorney for the National Labor Relations Board.

Wherefore, the complaint of the National Labor Relations Board against the Fruehauf Trailer Company, Respondent herein, should be dismissed.

FRUEHAUF TRAILER COMPANY,
By EARL L. VOGLER,
Its Vice-President.

STEVENSON, BUTZEL, EAMAN & LONG,
Attorneys for Respondent,
2288 National Bank Bldg., Detroit, Michigan.

Dated: November 1st, 1935.

VICTOR W. KLEIN,
Of Counsel.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 1st day of November, A. D. 1935, before me, a Notary Public in and for said County, personally appeared

Earl L. Vosler, who being by me duly sworn, says that he is Vice-President of Fruehauf Trailer Company; that he signed said Answer in behalf of said Company and is duly authorized so to do, and that he has read the Answer by him so signed, knows well the contents thereof, and that the statements therein contained are true of his own knowledge, except such as are made upon information and belief, and those he verily believes to be true.

[SEAL] VERONICA B. WALKER,
Notary Public, Wayne County, Michigan.

My commission expires Dec. 8, 1936.

STIPULATION

Filed November 18, 1935

It is hereby stipulated by and between the Regional Attorney for the National Labor Relations Board, complainant herein, and Counsel for the Fruehauf Trailer Company, respondent herein, that the Fruehauf Trailer Company on the following dates made shipments of goods hereinafter described from Detroit, Michigan, to the respective destinations hereinafter named, consigned to the Consignees hereinafter named:

1. August 3, 1934—to Baltimore, Md.—a car-load shipment of tractor trailers of an aggregate weight of 14,840 lbs., and certain other property to wit, one box of automobile lamps, electric plugs, brake parts, n. o. i. b. n., automobile parts, n. o. i. b. n., iron or steel and other articles of an aggregate weight of 3,425 lbs., and four tractor trailer couplers of an aggregate weight of 1,089 lbs., consigned to Warner, Fruehauf Trailer Company.

2. February 12, 1935—to Long Island City, N. Y.—a mixed carload shipment of tractor trailers, tractor trailer

couplers and automobile parts, iron or steel, n. o. i. b. n., of an aggregate weight of 21, 260 lbs., consigned to the Fruehauf Trailer Company.

3. February 8, 1935—to New Orleans, La.—a carload shipment of tractor trailers of an aggregate weight of 15,437 lbs., and certain other property, to wit, six tractor trailer couplers of an aggregate weight of 1,345 lbs., one box of spring shackles, iron or steel of an aggregate weight of 65 lbs., one display stand of an aggregate weight of 300 lbs., 1 brake drum weighing 65 lbs., one automobile axle with attachments weighing 145 lbs., one elliptic spring weighing 100 lbs., two boxes of automobile parts, n. o. i. b. n., of an aggregate weight of 100 lbs., consigned to the Fruehauf Trailer Company.

4. February 2, 1935—to Long Island City, N. Y.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches, tractor trailer couplers and automobile parts, n. o. i. b. n., iron or steel and other articles of an aggregate weight of 24,360 lbs., and certain other property, to wit, one box of automobile lamps and other articles of aggregate weight of 100 lbs., consigned to the Fruehauf Trailer Company.

5. January 25, 1935—to St. Paul, Minn.—a carload shipment of tractor trailers of aggregate weight of 23,308 lbs., and certain other property, to wit, eight tractor trailer couplers of an aggregate weight of 2,790 lbs., a certain quantity of loose and one box of automobile parts, n. o. i. b. n., iron or steel, of an aggregate weight of 370 lbs., and two gear frames of an aggregate weight of 2,290 lbs., consigned to Fred J. Saam Company.

6. October 24, 1934—to New Orleans, La.—a carload shipment of tractor trailers of an aggregate weight of 15,310 lbs., and certain other property, to wit, two tractor trailer couplers of an aggregate weight of 540 lbs., and one box of brake parts, n. o. i. b. n., and other articles weighing 580 lbs., consigned to the Fruehauf Trailer Company.

7. January 18, 1935—to Denver, Colorado—a carload shipment of tractor trailers of an aggregate weight of 13,410 lbs., and certain other property, to wit, seven tractor trailer couplers of an aggregate weight of 1,420 lbs., and one box of brake parts weighing 110 lbs., consigned to Timpete Bros.

8. January 8, 1935—to Philadelphia, Pa.—a carload shipment of tractor trailers of an aggregate weight of 21,290 lbs., and certain other property, to wit, one box of iron or

steel automobile wheels, with hubs and drums assembled, without tires, and other articles of an aggregate weight of 2,730 lbs., twelve brake drums weighing 720 lbs., one bundle of bolts weighing 15 lbs., and three tractor trailer couplers of an aggregate weight of 1,410 lbs., consigned to the Fruehauf Trailer Company.

9. December 5, 1934—to Jacksonville, Fla.—a carload shipment of tractor trailers of an aggregate weight of 15,395 lbs., and certain other property, to wit, one box of automobile parts and other articles weighing 525 lbs., and four tractor trailer couplers of an aggregate weight of 1,000 lbs., consigned to the Southeast Wheel & Rim Company.

10. November 23, 1934—to Allston, Massachusetts—a carload shipment of tractor trailers of an aggregate weight of 13,420 lbs., and certain other property, to wit, two tractor trailer couplers weighing 965 lbs., to boxes of automobile parts, n. o. i. b. n., iron or steel, weighing 270 lbs., one display stand weighing 300 lbs., one automobile axle with attachments weighing 145 lbs., one elliptic vehicle spring weighing 100 lbs., one brake drum without attachments weighing 65 lbs., and two boxes of automobile parts and other articles of an aggregate weight of 610 lbs., consigned to the Fruehauf Trailer Company.

11. November 17, 1934—to Philadelphia, Pa.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches without attachments, tire carriers and lights, tractor trailer couplers, automobile parts, n. o. i. b. n., iron or steel and automobile axles with attachments of an aggregate weight of 27,000 lbs., and certain other property, to wit, one box of electric lamps and other articles classified the same or lower, weighing 100 lbs., one bundle of copper tubing weighing 40 lbs., four boxes of electric plugs and other articles of an aggregate weight of 915 lbs., on box of felt, n. o. i. b. n., weighing 10 lbs., five pails of paint weighing 250 lbs., and six brake drums of an aggregate weight of 390 lbs., consigned to the Fruehauf Trailer Company.

12. November 8, 1934—to Philadelphia, Pa.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches, automobile lights, tractor trailer couplers, automobile wheels with pneumatic tires and automobile parts, n. o. i. b. n., of an aggregate weight of 14,915 lbs., consigned to the Fruehauf Trailer Company.

13. October 9, 1934—to Philadelphia, Pa.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches,

tractor trailer couplers, brake parts, n. o. i. b. n., and other articles, automobile wheels without tires, automobile parts, n. o. i. b. n., and automobile axles finished with attachments of an aggregate weight of 18,047 lbs., and certain other property, to wit, four pneumatic tires and tubes of a total weight of 420 lbs., one display board weighing 300 lbs., one elliptic spring weighing 100 lbs., one brake drum finished without attachments, weighing 65 lbs., consigned to the Fruehauf Trailer Company.

14. October 5, 1934—to Long Island City, N. Y.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches, tire carriers and lights, tractor trailer couplers, automobile wheels, wrenches, automobile axles with attachments, finished, automobile parts, n. o. i. b. n., iron or steel, of an aggregate weight of 16,977 lbs., and certain other property, to wit, one display board weighing 300 lbs., one elliptic spring weighing 100 lbs., one brake drum without attachments, finished, weighing 65 lbs., and one box of bolts and nuts and one bundle of nuts of an aggregate weight of 690 lbs., consigned to the Fruehauf Trailer Company.

15. Sept. 18, 1934—to St. Paul, Minn.—a carload shipment of tractor trailers of an aggregate weight of 18,275 lbs., and certain other property, to wit, three tractor trailer couplers of an aggregate weight of 1,485 lbs, three pick-up plates of an aggregate weight of 375 lbs, twenty-one automobile wheel rims, steel, and six wheel spacer bands of an aggregate weight of 945 lbs., one box of automobile parts, n. o. i. b. n., iron or steel, and other articles, six automobile wheels, iron or steel without tires, one box of tire carriers and wrenches, of an aggregate weight of 1,060 lbs., three boxes of tire carriers and other articles of an aggregate weight of 740 lbs., one bag of bolts and a certain quantity of sheet iron or steel automobile body parts, n. o. i. b. n., unfinished, of an aggregate weight of 750 lbs., consigned to St. Paul Terminal Warehouse.

16. December 21, 1934—to Philadelphia, Pa.—a mixed carload of tractor trailers, spare rims, rim wrenches, tire carriers and lights, tractor trailer coupler, dual automobile wheels, iron or steel, assembled, with hubs and drums, without tires and automobile parts, n. o. i. b. n., of an aggregate weight of 28,457 lbs., consigned to the Fruehauf Trailer Company.

17. August 10, 1934—to Long Island City, N. Y.—a carload shipment of tractor trailers of an aggregate weight of

17,810 lbs., and certain other property, to wit, two tractor trailer couplers of an aggregate weight of 540 lbs., and one box of automobile lamps and other articles weighing 2,285 lbs., consigned to the Fruehauf Trailer Company.

18. August 10, 1934—to Jacksonville, Fla.—a carload shipment of tractor trailers of an aggregate weight of 14,105 lbs., and certain other property, to wit, five tractor trailer couplers of an aggregate weight of 1,350 lbs., and one box of bushings, n. o. i. b. n., iron or steel, and other articles weighing 165 lbs., consigned to the Southeast Wheel & Rim Company.

19. January 25, 1935—to Baltimore, Md.—a carload shipment of tractor trailers of an aggregate weight of 13,430 lbs., and certain other property, to wit, three tractor trailer couplers of an aggregate weight of 810 lbs., one gear frame, without attachments, weighing 1,265 lbs., three pails of paint of an aggregate weight of 150 lbs., five boxes of brake parts and other articles of an aggregate weight of 770 lbs., consigned to Warner Fruehauf Trailer Company.

20. January 11, 1935—to Baltimore, Md.—a mixed carload shipment of tractor trailers, spare rims, rim wrenches, tire carriers and lights, automobile wheels, iron or steel, without tires, automobile parts, n. o. i. b. n., and tractor trailer couplers of an aggregate weight of 26,851 lbs., and other property, to wit, one box of electric light plugs and other articles of an aggregate weight of 45 lbs., consigned to Warner Fruehauf Trailer Company.

21. November 17, 1934—to Baltimore, Md.—a carload shipment of tractor trailers of an aggregate weight of 11,125 lbs., and certain other property, to wit, seven tractor trailer couplers of an aggregate weight of 1,890 lbs., three automobile wheels, iron or steel, without tires, of an aggregate weight of 195 lbs., one box of brake parts and other articles weighing 250 lbs., one box of automobile parts, n. o. i. b. n., weighing 140 lbs., two boxes of lamps and other articles of an aggregate weight of 880 lbs., and one bundle of elliptic vehicle springs weighing 60 lbs., consigned to Warner Fruehauf Trailer Company.

22. October 26, 1934—to Baltimore, Md.—a carload shipment of tractor trailers of an aggregate weight of 17,260 lbs., and certain other property, to wit, six tractor trailer couplers of an aggregate weight of 1,620 lbs., one box of bushings, n. o. i. b. n., iron or steel, and other articles, weighing 300 lbs., one box of automobile parts, n. o. i. b. n.,

iron or steel weighing 225 lbs., two automobile axles without attachments of an aggregate weights of 250 lbs., one box of brake parts, n. o. i. b. n. and other articles, weighing 265 lbs., forty brake drums without attachments, finished, of an aggregate weight of 1,625 lbs., one pail of paint weighing 60 lbs., consigned to Warner Fruehauf Trailer Company.

23. October 18, 1934—to Baltimore, Md.—a carload shipment of tractor trailers of an aggregate weight of 9,600 lbs., and certain other property, to wit, three tractor trailer couplers of an aggregate weight of 670 lbs., one pick-up plate for tractor trailer couplers weighing 190 lbs., one box of automobile parts, n. o. i. b. n., iron or steel, weighing 700 lbs., one gear frame without attachments weighing 850 lbs., and one tire carrier, knocked down, weighing 95 lbs., consigned to Warner Fruehauf Trailer Company.

24. December 6, 1934—to New Orleans, La.—a carload shipment of tractor trailers of an aggregate weight of 14,526 lbs., and certain other property, to wit, two tractor trailer couplers of an aggregate weight of 460 lbs., six automobile wheels, iron or steel, without tires, of an aggregate weight of 490 lbs., one air compressor, n. o. i. b. n., weighing 225 lbs., one rim wrench without attachments, iron or steel, weighing 7 lbs., certain quantity of automobile parts, n. o. i. b. n., iron or steel of an aggregate weight of 615 lbs., consigned to Fruehauf Trailer Company.

25. November 24, 1934—to New Orleans, La.—a carload shipment of tractor trailers of an aggregate weight of 16,829 lbs., and certain other property, to wit, five tractor trailer couplers of an aggregate weight of 1,300 lbs., and one box of automobile wheels, iron or steel, assembled with brake drums and hubs, with tires, and other articles weighing 2,450 lbs., consigned to the Fruehauf Trailer Company.

It is further stipulated that the within stipulation may be incorporated in the record in the above entitled cases and made a part thereof.

(Signed) G. L. PATTERSON,
Regional Attorney, Seventh Region.

(Signed) STEVENSON BUTZEL EAMON & LONG,
Attorneys for Respondent,

DECISION OF NATIONAL LABOR RELATIONS BOARD

Dated December 12, 1935

STATEMENT OF CASE

The National Labor Relations Board, hereinafter called the Board, upon charges duly filed by United Automobile Workers Federal Labor Union No. 19375, issued and caused to be served upon the Fruehauf Trailer Company, hereinafter called the respondent, two complaints, dated respectively October 23, and October 29, 1935, charging the respondent with unfair labor practices as defined in Section 8, subdivisions (1) and (3) of the National Labor Relations Act, approved July 5, 1935, hereinafter called the Act, in that respondent interfered with, restrained and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act, and discriminated in regard to the hire and tenure of employment of certain employees so as to discourage membership in a labor organization known as the United Automobile Workers Federal Labor Union No. 19375. The respondent duly appeared and filed a motion to dismiss and an answer in each case.

The Board ordered the cases consolidated, and on November 6, 7, and 8, 1935, the matter came up for hearing before the Board upon the complaints, the motions to dismiss and the answers, and upon the evidence offered by the parties. The Michigan Manufacturers Association asked for the right to intervene to the extent of filing a brief and was granted the right to intervene to that extent and did file a brief.

At the hearing the respondent offered evidence in support of its contention in its motion to dismiss that the Board was without jurisdiction because the unfair labor practices charged in the complaint did not occur in or affect interstate commerce. It was stipulated that the evidence so offered should be received as part of the respondent's defense in the event that the motions to dismiss were overruled. After oral argument by Counsel for the respondent, the motions to dismiss were overruled.

The case was fully heard upon the complaint, the answer, the evidence, and briefs.

FINDINGS OF FACT

I. Description of the Respondent's Business

1. The respondent, Fruehauf Trailer Company, is and has been since February 21, 1918, a corporation organized and existing under the laws of the State of Michigan, and is engaged in the manufacture, assembly, sale, and distribution of commercial trailers and of trailer parts and accessories including chassis. The trailers manufactured by the respondent are vehicles which are designed for the transportation of merchandise and are extensively used as instrumentalities of commerce between the states.

2. The respondent, whose plant and principal office is located in Detroit, Michigan, is the largest concern of its kind in the United States. The respondent maintains 31 branch sales offices in 12 different states, and has distributors and dealers in the principal cities of the United States. A wholly-owned subsidiary of the respondent operates in Toronto, Canada, where sales are made, and where considerable assembly work is done with materials obtained from the Detroit plant and in Canada.

3. More than 50% by value of the materials used by the respondent in manufacture, assembly, and shipping during 1934 were transported to its Detroit plant from Ohio, Illinois, Indiana, and other states. Most of the lumber was transported from southern states and most of the finished parts were also transported from states other than Michigan.

4. In 1934, sales made by the respondent amounted to $3,318,000. During the same year, its nearest competitor sold only 37% of that amount. In 1935, the respondent's sales will probably exceed this figure and its position in the trade will be approximately the same as in 1934. More than 80% of the sales are of products shipped outside the State of Michigan through and to other states and to foreign countries. In 1932, 1,300 trailers built by the respondent were in use in 16 different states. Between January 1 and November 1, 1935, 112 carloads of the respondent's products were shipped to points outside the State of Michigan by railroad, and 400 to 500 trailers with accessories were hauled over the highways by motor trucks or tractors to points outside the State. During the first ten months of 1935, 200 trailers were shipped to one customer in Chicago, Illinois, upon an order to the customer's specification, for use in a

transportation business which extends beyond the State of Illinois.

5. About 30 chassis a day are finished at the Detroit plant and 80% of them are started on their way to destinations outside the State of Michigan.

6. In connection with its interstate sales, the respondent furnishes service in the determination of customers' needs and also assists in the laying out of special construction requirements. Through mechanics employed at its branch sales offices, the respondent furnishes regular service, and also provides for service through its distributors and dealers.

7. The respondent's sales of trailers in Canada are accomplished through its Canadian subsidiary, and its sales in states other than Michigan are accomplished through its branch sales offices and through its distributors and dealers. Except when sales are made from branch sales office stocks, for cash at list prices, sale contracts are approved by the Detroit office of the respondent. Where sales are made for installment payments, the credit of the distributor or dealer is subject to the approval of the Detroit office, and chattel mortgages or conditional sales contracts are given to secure the payment. All notes and mortgages are payable to the respondent, and such paper is negotiated exclusively with the Fruehauf Trailer Sales Company, a wholly-owned subsidiary of the respondent.

8. It is a practice of the respondent to "consign" trailers and parts to distributors and dealers in various states with title retained in the respondent until payment is made. For example, considerable merchandise is sent to a distributor in Richmond, Virginia, on such terms.

9. It is also a practice of the respondent to take title to other vehicles and to merchandise of various kinds, as part payment for trailers sold in places outside of the State of Michigan. Articles so taken by the respondent are shipped to its Detroit plant to be reconditioned, sold or otherwise disposed of.

10. On some of the materials purchased by the respondent and shipped to its Detroit plant from outside the State of Michigan, as found in paragraph 3 hereof, further manufacturing operations are performed as, for example, the dressing of some lumber, the cutting of sheet steel, and the turning down of axle forgings. A substantial part of such materials, however, are received in finished form and no work is done on them in the Detroit plant before they are

re-shipped. For example, tools, brakes, tires, wheels, rims, bearings, spacer bands, and accessories which the respondent receives from states other than Michigan are shipped from its factory in Detroit to its branch sales offices to be used by the respondent's mechanics in the servicing of customers' needs. In the latter part of 1934 and the beginning of 1935, fourteen of such shipments were made to places outside of Michigan on the respondent's own orders.

11. Certain parts, completely manufactured outside of Michigan and shipped to the respondent's Detroit plant on its order, are there assembled with other parts, some of which are partially manufactured by the respondent after having been shipped to it from outside the state, to make the products then shipped as trailers.

12. After being assembled in the Detroit plant, many of the trailers shipped by the respondent to foreign destinations, and many of those shipped to other states, are "knocked down" or disassembled by the shipping department at the Detroit plant before shipment. Such trailers are then assembled again at or near the points of destination.

13. In addition to the mechanics regularly employed at its branch sales offices for service, the respondent employs traveling mechanics who supervise the work of the local service agencies. A substantial part of the mechanical services rendered by the branches outside the State of Michigan consists of changes in construction, weight, or design. Practically all trailers made for the respondent's stock require such changes, and when sales are made from the stock of branch sales offices, the desired changes are made by mechanics employed by the respondent.

14. One of the chief and very essential operations which are performed on the respondent's product outside the State of Michigan is the installation of the device known as the "fifth wheel." It is a device for coupling a trailer to a tractor and is specially designed by the respondent in four or five different types. The respondent manufactures about as many "fifth wheels" as it does trailers, and in many cases the installation is part of the sale. Before most of the respondent's trailers can be used, this "fifth wheel" must be attached to the customer's truck or tractor. The installation of the simplest form of this device requires half a day's work on the part of the respondent's mechanics.

15. The desire and intention of the respondent, as expressed by Earl L. Vosler, its vice president and only wit-

ness, is to keep a steady flow of business from the sources of the raw materials and partially or wholly manufactured parts used by it, through the Detroit plant to the various destinations of its finished products, and of the parts and mechanical devices which it ships out. The management of the respondent and all of its operations are designed to accomplish that intention.

16. To accomplish this objective, the respondent has a planning department, employing twenty or thirty men, which lays out schedules for purchase, manufacture, assembly, shipment, and sales.

17. All purchases are made on schedules based on a schedule of work in the factory, and the work schedule in turn is determined by and based on the sales volume. All of the respondent's vendors ship on the schedule so designed. So closely are purchase, work, and shipment synchronized that on occasion, work, or shipment is delayed until required parts arrive to complete the assembly. Every day articles of commerce come into the Detroit plant from outside the State of Michigan, and every day things produced or forwarded by the respondent move out to various parts of the country.

18. In the operations at the Detroit plant the respondent does not give a particular group of employees the job of doing work on trailers, parts, or accessories sold in the State of Michigan and another group the job of doing work on trailers, parts, or accessories sold beyond the State of Michigan. They all work together.

19. In trade-mark applications filed in 1924, 1925, and 1931, the respondent declared that it uses its trade-mark "in commerce among the several states" or "in interstate commerce." There is no evidence that the nature of the respondent's business is different now than when such applications were filed.

20. The manufacturing and assembly operations of the respondent at its Detroit plant are essentially connected with and dependent upon its purchase, sales, and distribution operations without the State of Michigan, and these connections and interdependences are accomplished through and make use of commerce between the states and with foreign countries, and the instrumentalities of such commerce.

II. United Automobile Workers Federal Labor Union No. 19375 and Respondent's Conduct with Respect Thereto

21. The United Automobile Workers Federal Labor Union No. 19375, hereinafter called the Union, is a labor organization within the meaning of Section 2 (5) of the Act. The Union had been organized among the production and maintenance employees of the respondent's Detroit plant, and at the time of the occurrences hereinafter described included 177 active members and about 100 members who at one time or another paid dues and did not usually attend meetings. The production and maintenance men at the respondent's factory at that time numbered about 400.

22. The respondent had met with representatives of the Union as long as it was under a legal obligation to do so under the National Industrial Recovery Act, and when the legal obligation under that Act was removed, the respondent no longer felt under any obligation to meet with such representatives.

23. Early in 1934, the respondent, through a detective agency, hired a detective, Martin. Mr. Vosler, the respondent's vice-president, testified that Martin was "a personnel man as we considered him." However, there is no doubt that it was Martin's duty, as Mr. Vosler himself admitted, "to ferret out the union activities of the men", and to keep the respondent "informed of what was going on." The respondent wanted this information because, as stated in the testimony of Mr. Vosler: "We do not want trouble of any kind started in the plant. We wanted to keep a steady flow of business."

24. For purposes of deception, and in order to make him eligible for membership in the Union, the respondent gave Martin employment in the plant. He thereafter joined the Union and eventually became its treasurer. He was thus able to procure a list of all the members of the Union. He made reports more than once a week to the respondent, and the lists of members which he furnished were given to the respondent's superintendent, Halpin. With these lists in his hand, Halpin went about the factory from time to time and warned various employees against union activities. This result of Martin's activities caused suspicion, unrest, and confusion among the employees.

25. A sub-foreman named Peterson, who was later discharged, was urged by Halpin to resign his office in the

Union, and work with Halpin to see that the Union did not gain strength in the plant. Peterson, who interviewed applicants for work, was also instructed by his foreman, Rivenbank, to learn from them whether they belonged to a union or believed in unionism, and was told that if they did, they would be objectionable.

26. Completely armed by Martin with the necessary information, the respondent determined to put a stop to all attempts on the part of its factory workers to form an efficient independent bargaining agency and in furtherance of that purpose, summarily discharged nine men, and threatened three others with discharge. Stephen Sprytzer and Arthur Hillman were discharged before the Act became effective.

27. As to the remaining seven men who were discharged, the evidence is found principally in the testimony of the discharged men and other employees. There was no credible or substantial contradiction of this testimony. Our conclusions as to the unfair labor practices charged are reached after a consideration of such evidence and argument as were offered by the respondent, who failed to produce witnesses in its own employ obviously having knowledge of the facts surrounding these discharges, and who in its brief does not argue that its conduct did not constitute unfair labor practices. In every instance the discharge was summary, taking place during the day and after the men had commenced work.

As to the discharges, we find:

28. *Nicholas Trusch* was employed as a carpenter in the body shop of the respondent for five and a half years and had a good record, no fault ever having been found with his work or conduct. His foreman, Rosenbusch, asked him on July 15, 1935, "Do you want your job or your union?" When Trusch replied that he would not give up the Union, he was discharged between 9 and 10 in the morning of the same day. The employment manager, Larson, took him to Superintendent Halpin, who said, "You see you must stick with the company and not with the union." When Trusch said that he would not change his mind, Halpin discharged him.

The only attempt by the respondent to meet Trusch's testimony was through Mr. Vosler, its vice-president, who, however, testified that he knew none of the facts surrounding this or any of the discharges, of his own knowledge. The

failure of the respondent to produce the foreman, Rosenbusch, or the superintendent, Halpin, who were in a position to contradict Trusch's statement, if it could be contradicted, is significant.

We find that Trusch was discharged for the reason that he joined and assisted the Union.

29. *William Weinmann* was hired in May 1933, and worked as a carpenter and body builder. On July 13, 1935 his foreman, Rosenbusch, said to him, "I see you are a union man. Will you consider dropping out of the Union?" Weinmann's answer was, "No." He was discharged at noon on that day, but was paid off five days later.

There was no credible evidence showing any reason for Weinmann's discharge other than his activities in the Union. Here again the failure of the respondent to produce the foreman and superintendent at the hearing is significant.

We find that Weinmann was discharged for the reason that he joined and assisted the Union.

30. *Arthur Beck* was employed in November 1934 and worked in the shipping department. He was shop steward of the Union. On July 3, 1935, outside of working hours, his foreman, Rosenbusch, saw Beck receive an application for union membership. Beck was discharged at noon on July 6.

While Beck had had three or four accidents, the last was in February 1935 and those on account of which he lost any substantial time occurred in 1934. He was not told he was being discharged because of the accidents, and we are satisfied he was not discharged for that reason. The failure of the respondent to produce the foreman and the superintendent, who knew all about Beck's discharge, must again operate against the respondent. Upon all the evidence, circumstantial and direct, we find that Beck was discharged for the reason that he joined and assisted the Union.

31. *Leonard Chaloux* was employed June 8, 1933 in the frame department. He was a member of the Union and was discharged on July 15, 1935.

The character of Chaloux's work was never criticized. In fact, at the time of his discharge, his foreman, Goodell, said that his work was all right but that he would have to let him go.

Chaloux applied for work five weeks after his discharge, and at a time when 15 or 20 more men were working in the department than at the time of his discharge, Goodell told

him that the superintendent would not have anything to do with him and that the sub-foreman Schwartz had been told to tell the men not to attend union meetings.

There is no evidence entitled to any weight that Chaloux was discharged for any reason other than his union activities and we find that the respondent discharged and has since refused to reinstate Leonard Chaloux for the reason that he joined and assisted the Union.

32. *William Milne* was originally hired in June 1933 and worked in the frame department. In April 1934 he joined the Union. A short time later, his foreman, Goodell, said to him, "You should leave that union alone. I am just warning you." In October 1934 he was discharged, but, with others, was reinstated as the result of a conference with the old National Labor Relations Board.

On July 8, 1935, at about 9:30 A. M., Milne was discharged by his foreman who said to him, "You know what it is all about", and told him that the order came from "upstairs." A few days later he went back for his tools and the foreman said, "Bill, I warned you a year ago about this union business." A week later a man with much less experience was employed in his place.

We find that Milne was discharged for the reason that he joined and assisted the Union.

33. *Wollery Coonrod* went to work for the company on March 28, 1927, as a fitter, and at one time before his discharge had been a foreman on the night shift. He was discharged at 2:30 in the afternoon of July 5, 1935, when his foreman, Goodell, told him that he was being discharged for "fooling around the damn union." He immediately interviewed the superintendent who affirmed the statement of the foreman.

The respondent admits that it has continued to refuse to employ Coonrod, and it is so found. The attempt on the part of the respondent to attribute Coonrod's discharge to a reason other than his affiliation with the Union does not carry weight. We find that Coonrod was discharged and has since been refused reinstatement by the respondent for the reason that he joined and assisted the Union.

34. *J. L. Peterson* went to work for the respondent May 7, 1927. He was employed in the assembly division of the service department and before his discharge had risen to the position of sub-foreman. At one time he had been a travelling mechanic for the respondent.

In October 1934, Halpin, the superintendent, sent for Peterson. After complimenting Peterson on his record, Halpin attempted to persuade him to give up his membership in the Union and promised Peterson that the company would take care of him if he would see to it that the Union did not gain strength in the plant. In November of the same year, Halpin again offered Peterson a better job upon the same conditions, and on this occasion also stated that the company would not tolerate the Union.

On July 8, 1935, after a meeting of the Union, Peterson announced in the presence of the detective, Martin, that he was resigning his office of recording secretary in the Union. The next morning Halpin, superintendent, told him that the company's vice-president approved of his stand the previous evening.

On September 27, 1935, Peterson was at the Detroit office of the National Labor Relations Board for an interview with the Regional Attorney of that office. Martin was at the Board's office at the time and met Peterson as he was leaving the office. The detective agency through which Martin was employed reported this incident to the respondent's vice-president, who in turn reported it to Halpin. On October 10, at about 9:30 in the morning, Peterson was discharged.

There was an attempt on the part of the respondent to explain Peterson's discharge because of a mistake he had made in his work. However, in view of Peterson's obvious efficiency and excellent record, we cannot find that he was discharged for this reason. The discharge of Peterson was made because of his union activities, the crowning offense in the eyes of his employer being that he conferred with an attorney of the National Labor Relations Board. We find that the respondent discharged Peterson for the reason that he joined and assisted the Union.

35. On or about July 8, 1935, Halpin, holding in his hand a list of badge numbers of the employees of the factory, which list was one of those furnished by Martin, threatened Richard McClure, John Beethway, and one other unidentified employee with discharge if they did not give up their union activities. We find on this evidence that the respondent on that date threatened to discharge the men so named and described, for the reason that said employees had joined and assisted the Union.

36. Stephen Sprytzer and Arthur Hillman, president and vice-president of the Union, respectively, were discharged by

the respondent on July 2, 1935, for the reason that they joined and assisted the Union. Since these discharges took place before the Act became effective, the Board has no jurisdiction, and we so find.

III. The Effect of the Discharges

37. The result of the discharges of the above-named employees was resentment on the part of the members of the Union who believed the discharges to be due to the union activities of the discharged men. After five of the men had been discharged, a special meeting of the Union was held on July 8th, at which about 100 men were present. A strike was discussed and a vote was taken in which 67 votes were cast, 35 being in favor of a strike. Because of the rule of the Union requiring a two-thirds vote, a strike was not ordered. Martin, who was now treasurer of the Union, was one of those speaking against a strike. The influence which he exerted on behalf of the respondent affected the result of the strike vote.

38. Before the meeting of July 8th, the officers of the Union sent a telegram to the respondent requesting a conference. The telegram was received but not answered. The reason advanced by the respondent for ignoring the telegram is that it stated that the Union represented all the employees and that this was an "exaggeration." We do not feel this convincing, particularly in view of the fact that after the meeting of July 8th a group of union officers called on the respondent's vice-president, and, after being kept waiting, were told he was not in but that he would call them. He did not do so. This was regarded by the men as a refusal to meet the representatives of the Union.

39. A further result of the discharges was that the members of the Union were coerced and restrained from any attempt to organize for collective bargaining. As the president of the Union put it, "After I get fired they would pick one out here and there, and we could not get a bargaining agency to go and see them."

40. The respondent admits that industrial strife in its plant would substantially affect its operations, and any lack of harmony among the employees would cause a slowing up of the work, as a result of which goods would stop coming into the factory from other states, and products would stop going out.

IV. Concluding Findings of Fact and Conclusions of Law

41. By each and all of the discharges and threats so found to have been made, and by the employment of the detective, Martin, for the purpose of espionage within the Union in the manner aforesaid, the respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act.

42. By each and all of the discharges so found to have been made, the respondent did discriminate in regard to hire and tenure of employment, and has thereby discouraged membership in a labor organization known as the United Automobile Workers Federal Labor Union, Local No. 19375.

43. The aforesaid acts of the respondent occurred in commerce between the State of Michigan and several other states, and between the State of Michigan and the Dominion of Canada. The employer and employee relationship which is subject of these complaints arose in connection with an enterprise conducted by the respondent which is a continuous and carefully synchronized combination of purchase, assembly, manufacture, distribution, and sale constituting a great interstate movement, from which local incidents, intrastate if taken alone, cannot be separated. Many articles received at the Detroit plant are merely forwarded, many others merely assembled with articles partially manufactured there and forwarded unchanged and unattached. Further manufacture and assembly at points of destination outside of the State of Michigan is common. The enterprise in which the relationship arose between the respondent and the employees concerned in these charges is, taken as a whole, an interstate commercial enterprise, in forwarding the movement of which these employees were engaged.

44. Any cessation or obstruction of operations at the respondent's Detroit factory necessarily has a direct, material, and substantial effect in burdening and obstructing commerce and the free flow of commerce between the State of Michigan and foreign countries, between the State of Michigan and the 12 other states in which the respondent maintains branch sales offices, and other states in which it sells and to which it ships for sale trailers, trailer parts, and accessories, and in which it performs manufacturing and assembly operations necessary to the completion of its manu-

factured product, and commerce and the free flow of commerce in manufactured products and accessories between the respondent's Detroit plant and Toronto, Canada.

45. The aforesaid acts of the respondent caused unrest and confusion among the employees in the respondent's Detroit plant, which had the effect of burdening and obstructing commerce and the free flow of commerce between the State of Michigan and foreign countries, between the State of Michigan and the 12 other states in which the respondent maintains branch sales offices, and other states in which it sells and to which it ships for sale trailers, trailer parts, and accessories, and in which it performs manufacturing and assembly operations necessary to the completion of its manufactured product, and commerce and the free flow of commerce in manufactured products and accessories between the respondent's Detroit plant and Toronto, Canada.

46. The aforesaid acts of the respondent led to confusion, resentment, and bitterness among the respondent's employees, and tended to lead to a labor dispute burdening and obstructing commerce and the free flow of commerce between the State of Michigan and foreign countries, between the State of Michigan and the 12 other states in which the respondent maintains branch sales offices, and other states in which it sells and to which it ships for sale trailers, trailer parts and accessories, and in which it performs manufacturing and assembly operations necessary to the completion of its manufactured product, and commerce and the free flow of commerce in manufactured products and accessories between the respondent's Detroit plant and Toronto, Canada.

47. Interference by employers with the activities of employees in forming or joining labor organizations results and tends to result in labor disputes and other forms of industrial unrest which burden and obstruct commerce and the free flow of commerce.

48. Upon the basis of the foregoing, the Board finds and concludes as a matter of law:

(a) The respondent, by discharging Nicholas Trusch, William Weinmann, Arthur Beck, Leonard Chaloux, William Milne, Woolery Coonrod, and J. L. Peterson, and each of them, by threatening to discharge Richard McClure, John Beethway, and one other unidentified employee with discharge if they did not give up their union activities, and

by the employment of a detective for the purpose of espionage within United Automobile Workers Federal Labor Union No. 19375, as set forth above, interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the National Labor Relations Act, and engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (1) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act;

(b) the respondent, by discouraging membership in the labor organization known as United Automobile Workers Federal Labor Union No. 19375 by discharging Nicholas Trusch, William Weinmann, Arthur Beck, Leonard Chaloux, William Milne, Woolery Coonrod, and J. L. Peterson, and each of them, said discharges constituting discrimination in regard to hire and tenure of employment, as set forth above, has engaged in and is engaging in unfair labor practices affecting commerce within the meaning of Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

ORDER

On the basis of the findings of fact and conclusions of law, and pursuant to Section 10, subdivision (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Fruehauf Trailer Company, and their officers and agents, shall:

1. Cease and desist (a) from discharging or threatening to discharge any of its employees for the reason that such employees have joined and assisted United Automobile Workers Federal Labor Union No. 19375, and have engaged in concerted activities for their mutual aid and protection: (b) from employing detectives, or any other persons, for the purpose of espionage within the United Automobile Workers Federal Labor Union No. 19375; and (c) from in any other manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the National Labor Relations Act;

2. Cease and desist from discouraging membership in United Automobile Workers Federal Labor Union No. 19375, or any other labor organization of its employees, by discrimination in regard to hire or tenure of employment or any term or condition of employment;

3. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Offer to Nicholas Trusch, William Weinmann, Arthur Beck, Leonard Chaloux, William Milne, Woolery Coonrod, and John L. Peterson immediate and full reinstatement, respectively, to their former positions, without prejudice to their seniority or other rights and privileges previously enjoyed;

(b) Make whole said Nicholas Trusch, William Weinmann, Arthur Beck, Leonard Chaloux, William Milne, Woolery Coonrod, and John L. Peterson for any losses of pay they have suffered by reason of their discharge, by payment of a sum of money equal to that which each, respectively, would normally have earned as wages during the period from the date of his discharge to the date of such offer of reinstatement, computed at the wage rate each was paid at the time of discharge;

(c) Post notices to its employees in conspicuous places throughout its Detroit plant, stating that the respondent has ceased and desisted as provided in paragraphs 1 and 2 of this order, and stating that such notices will remain posted for a period of at least thirty (30) consecutive days from the date of posting.

And it is further ordered that,

4. The complaint be, and hereby is, dismissed with respect to the discharges of Stephen Sprytzer and Arthur Hillman.

Signed at Washington, D. C., this twelfth day of December 1935.

(Signed) J. Warren Madden, *Chairman.*

(Signed) Jno. M. Carmody, *Member.*

(Signed) Edwin S. Smith, *Member.*

National Labor Relations Board.

[SEAL]

TRANSCRIPT OF HEARING

Room No. 921 Federal Building, Detroit, Michigan, Wednesday, November 6, 1935

The above-entitled matter came on for hearing, pursuant to notice, at 10 o'clock a. m.

Before JOSEPH W. MADDEN, Chairman, National Labor Relations Board; JOHN M. CARMODY, member of the Board; EDWIN S. SMITH, member of the Board

APPEARANCES

G. L. Patterson, attorney, on behalf of the National Labor Relations Board.

Stevenson, Butzel, Eaman & Long, by *Victor W. Klein*, 2288 National Bank Building, Detroit, Michigan, on behalf of Fruehauf Trailer Company, respondent.

Charlton Ogburn, 120 Broadway, New York City, New York, on behalf of United Automobile Workers Federal Labor Union No. 19375.

2 *Hal H. Smith*, 2900 Union Guardian Building, Detroit, Michigan, on behalf of Michigan Manuacturers Association, intervenor.

Proceedings

Chairman MADDEN. Gentlemen, the hearing will come to order.

Since this hearing is in a Federal court room, and we are more or less guests of the court, I wish you would refrain from smoking, if you please.

Are counsel ready to proceed?

Mr. PATTERSON. Complainant is ready.

Mr. KLEIN. Respondent is ready.

Mr. HAL H. SMITH. If the Board please, the speaker, Hal H. Smith, represents the Michigan Manufacturers Association, having upwards of one thousand members engaged in manufacturing in the State of Michigan, who feel that the decision of the issues in this case will settle the question perhaps of whether or not the Act, or at least certain of its provisions, would be applicable to them in their relations with their employees.

The rule permits, as I understand it, in the discretion of the Board, intervention by the proper parties. We would like to apply at this time for leave to intervene, supplementing this oral application by a written application, for

3 the purpose of being heard; not for the purpose of presenting testimony, but for the purpose of being

heard at the proper time, if the Board will permit it, upon such questions of law as the record presents.

Chairman MADDEN. How would you propose to present those questions, Mr. Smith? In a brief filed after the hearing?

Mr. HAL H. SMITH. Well, if there is to be oral argument after the hearing, Mr. Chairman, we may desire to participate in that; or if not, by the filing of a written brief.

Chairman MADDEN. And that could be prepared reasonably promptly, could it?

Mr. HAL H. SMITH. Yes, sir.

Chairman MADDEN. Because I think that to permit an intervenor to have an unduly long time would not be proper.

Mr. HAL H. SMITH. We would accommodate ourselves to the wishes of the Board entirely in that connection, Mr. Chairman, and ask for no further time than was granted to us, or that the Board thought we should have.

Mr. PATTERSON. If the Board please.

Chairman MADDEN. Mr. Patterson.

Mr. PATTERSON. I believe that any intervention on behalf of the Michigan Manufacturers Association should be conditioned upon such Association showing its connection with the respondent in this case.

Certainly we should not be burdened here with
4 an officious intermeddler; but if the connection between the respondent, the Fruehauf Trailer Company, and the Michigan Manufacturers Association is properly shown, so that it is indicated that they have an interest in this case, then we have a different situation.

Chairman MADDEN. What do you mean by that, Mr. Patterson? I mean, what sort of an interest do you refer to; membership or what?

Mr. PATTERSON. Well, I certainly think, if the Board please, that the membership should be shown, and that the applicant here, who now seeks to intervene, should lay some sort of a foundation, so that this Board can determine whether or not it is a proper party to this case. There should be shown what interest they have to serve.

Mr. HAL H. SMITH. The respondent in this case is a member of the Association.

Chairman MADDEN. It seems to me that the motion to intervene indicates the interest, and the only interest, which the Manufacturers Association of Michigan claims to have, namely, that many of its members are situated similarly to the respondent in this case; and that the decision of this case would be properly applicable to many other members of the Association.

Mr. PATTERSON. If the Board please, if I might just make one further observation.

Chairman MADDEN. Yes, sir.

5 Mr. PATTERSON. The complaint in this case charges the Fruehauf Trailer Company with the commission of unfair labor practices, as set forth in the National Labor Relations Act. The issue in this case is whether or not the Fruehauf Trailer Company has committed unfair labor practices.

As a further——

Chairman MADDEN. Mr. Patterson, you are still speaking to this motion, are you?

Mr. PATTERSON. Exactly.

Chairman MADDEN. Proceed.

Mr. PATTERSON. I think that, in view of the nature of this controversy, one of the conditions of permitting the Michigan Manufacturers Association to become an intervenor here, should be that they show whether or not it is a part of their obligation to their respective members that they contest proceedings under the National Labor Relations Act.

Chairman MADDEN. Well, I should guess, Mr. Patterson, that the Michigan Manufacturers Association does not have any such provision in its by-laws, or anything like that. There probably is a rather wide discretion in the management of the Association, in determining whether or not it should do things like this. I think you are asking for the impossible.

What about that?

Mr. HAL H. SMITH. Mr. Chairman, the Michigan Manufacturers Association has no specific provision of that

6 kind in its charter or by-laws; but for the upwards of thirty years that it has been in existence, from time to time it has concerned itself with public questions that have arisen in the courts, that would affect the general interests of its members. It has been heard before the courts here and elsewhere on many such issues.

This is a question as to the enforcement of the Act, and the jurisdiction of the Board. Whether we disagree as to just the solution of these issues or not, is not now important. These are grave public questions, and they are peculiarly questions which the members of the Association look to the organization to intervene in, and interest itself in. Its charter and by-laws contain the general provision that it is its duty to concern itself with general public questions that affect the business of its members.

I can think at the present time of no more important matter than to assist in a proceeding like this, in the solution of the difficulties that have arisen, and are constantly

arising, which it is its hope that there will be found some way, through this Act and through this Board, of solving.

The MEMBER (Mr. Carmody). Is the brief to which you refer likely to show any connection between the present policy of the respondent company here, and your organization? In other words, do you have any connection with their labor policy?

Mr. HAL H. SMITH. No sir; we do not.

7 Mr. CARMODY. You do not advise your members in connection with labor policies?

Mr. HAL H. SMITH. We do not advise them directly on their individual labor policy.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. We do advise them, however, as to what we think the law is.

Mr. CARMODY. Yes.

Mr. HAL H. SMITH. And we do recommend certain public policies.

Mr. CARMODY. Yes.

Mr. HAL H. SMITH. But individual actions, or cases, do not come to, nor are they referred to the Association, and it does not interfere with them.

Mr. CARMODY. I am not quite clear yet as to your distinction.

Mr. HAL H. SMITH. Well, we do not in any way supervise the employment departments of the members.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. But if a member for instance is uncertain as to whether the law of Michigan prescribes certain labor regulations for some of his employees, he consults the Association.

Mr. CARMODY. Yes.

Mr. HAL H. SMITH. And the Association advises

8 him in that matter.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. If it is conceived by a member that a provision of the Labor Law, we will say, of Michigan, should be modified, or amended, the Association looks into that, and advises him.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. So that on general questions it is constantly, through its executive manager, furnishing general advice, and through its counsel, giving opinions as to the law.

Mr. CARMODY. But there is no department dealing with labor relations, or industrial relations.

Mr. HAL H. SMITH. Well, we have an executive manager—we do not have a department—and he advises all the while on those matters.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. But as I understand what your Honor is referring to, we have no connection with the defendant, or any other member, as to employing certain men, or making certain contracts.

Mr. CARMODY. Your concern is with policy.

Mr. HAL H. SMITH. Exactly.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. Now, the question of the application, we will say, of the Wagner Act, is a matter as to which members have consulted the Association, and the Association attended the hearings on the Act in Washington.

9

Mr. CARMODY. I see.

Mr. HAL H. SMITH. And has concerned itself—has offered suggestions, and has concerned itself with the provisions of the act; and has made recommendations as to the obedience of its members, and will continue to advise them, so that its participation here would be of great assistance in that connection.

Mr. CARMODY. Was the association opposed to or in favor of the passage of the act, in connection with those hearings?

Mr. HAL H. SMITH. Well, I think it is fair to say that, as the act was finally modified—or rather as the act was finally passed, it did not meet the views of the association.

Mr. CARMODY. It did not?

Mr. HAL H. SMITH. It did not, as finally passed; no.

Mr. CARMODY. I see.

Mr. HAL H. SMITH. That is, we made many suggestions that were not incorporated in the act.

Chairman MADDEN. Mr. Smith, your motion is granted——

Mr. HAL H. SMITH. Thank you.

Chairman MADDEN (continuing). To the extent that you may file a brief after the hearing, and within such time as is permitted for the filing of briefs.

10

Mr. HAL H. SMITH. Very good.

Mr. OGBURN. Mr. Chairman, I would like to ask a question, if it is not too late, for the record.

Chairman MADDEN. Proceed.

Mr. OGBURN. I would like to ask if the Michigan Manufacturers Association is a member of the National Manufacturers Association?

Mr. HAL H. SMITH. No, sir; it is entirely separate. There are certain of its members who are members of the National Manufacturers Association, but the organization is entirely separate.

Mr. KLEIN. If the Board please, there has been a motion to dismiss, in regard to the first case—I understand that

there are two cases before this Board; and a motion to dismiss as to the first case was filed with the Regional Board, with the understanding that upon adverse ruling by the Board, and only upon adverse ruling, the answer would be filed, reserving in the answer, as you have undoubtedly observed, all of our rights under the motion; and renewing the motion.

Mr. PATTERSON. I caused that to be filed for you yesterday, counsel.

Mr. KLEIN. Yes. A similar pleading was filed in the second case. I understand the cases have been consolidated.

It occurred to us that we should be given the opportunity to present oral argument on that motion, and to present and offer some testimony particularly bearing upon the subject of whether or not the respondent, the Fruehauf Trailer Company, is engaged in interstate commerce, which we think is very pertinent to the question of jurisdiction; that is whether or not this Board would have jurisdiction to entertain a case of this kind.

11

Clearly, if the respondent is not engaged in interstate commerce—and we do not believe it is—then the Board should refuse to entertain this proceeding.

At this time I should again like to renew the motion, and all of the points as set forth in the motion, and offer testimony on that particular point, bearing upon the question of jurisdiction.

Chairman MADDEN. Your proposition, as I understand it, is to offer testimony adverse to the interstate feature, at this stage of the proceeding; is that correct?

Mr. KLEIN. That is right, Mr. Chairman, because we believe that goes essentially to the question of jurisdiction; and if this Board does not have jurisdiction, because the respondent is not, in this phase of its operations, engaged in interstate commerce, then, of course, the rest of the proceedings would be useless.

It is in support of that motion as originally filed, and as renewed in our answer, that we now make the offer to put in testimony by Mr. Vosler, who is vice president, in charge of the manufacturing operations of the respondent company.

12

I should like that privilege.

Chairman MADDEN. What does counsel say to that?

Mr. PATTERSON. If the Board please, I have no objection to the company offering testimony regarding the interstate commerce or lack of interstate commerce activities of the company.

However, the respondent here has filed a motion to dismiss, which has been overruled. A similar motion has been

Q. Mr. Vosler, you are a resident of the city of Detroit?
A. Yes, sir.
Q. And you have lived here for a great many years, have you?
A. Yes, sir.
Q. How long?
A. Since 1902.
Q. 1902.
A. Yes, sir.
Q. And you have been with the Fruehauf Trailer Company for a great many years, have you?
A. Yes, sir.
Q. How long?
A. I have been with the company since 1917.
Q. What is your present office or position with the Fruehauf Trailer Company?
A. Vice president.
Q. In charge of what division?
A. Among other things, the manufacturing and production division.
17 Q. And you are familiar, I assume, with all of the details of the operations of the company?
A. I think so.
Q. In connection with this hearing, Mr. Vosler, have you prepared a statement, a complete statement, as to the various phases of the business of the Fruehauf Trailer Company?
A. Yes, sir; I have prepared a statement which I think covers all of the phases of the business of the company.
Q. And that statement is made up from facts that you know of, of your own knowledge, is it?
A. It is made up exactly that way, yes, sir; chiefly by myself.
Q. And you prepared this statement, did you, with a view of clearly and fully setting forth the operations of the company, so far as you could fairly present that statement to this Board?
A. Exactly.
Mr. KLEIN. If the Board please, I ask that this document be marked as respondent's exhibit no. 1 for identification.
Chairman MADDEN. It may be so marked.
(The document referred to was marked "Respondent's Exhibit No. 1", for identification.)
Q. (By Mr. KLEIN.) Mr. Vosler, I show you respondent's exhibit no. 1, for identification, and ask you if that
18 is the statement to which you have just referred.
A. Yes, sir.
Mr. KLEIN. I thought it would save a lot of time, if the Board please, to have Mr. Vosler read this statement into

the record, being a statement which in detail covers all of the various phases of the business and operations of this company.

I could ask him about it question by question, but it would take considerably greater time to proceed in that way; and these are all statements made up of his own knowledge, and from facts he has available, to clearly set forth the operations of the company before the Board.

Mr. PATTERSON. Now, if the Board please, we have a witness here who is capable of testifying, and I certainly object to the introduction in evidence of a prepared statement, of this sort, obviously designed to have everything recited here in detail just as he wants it.

Now, the witness is here on the witness stand, obviously prepared to testify, and the only way in which the cross-examination can be properly conducted, is by having this man tell his story verbally, and not through any written statement.

Chairman MADDEN. I do not see that, Mr. Patterson. If he chooses to testify from a memorandum, whether you call it a written statement or not, if he elects to testify from it, that may indicate something about how familiar he is with the matters that he is testifying concerning; but it does not affect your right to cross-examine at all. It is a very common thing, is it not, for a witness to testify from a written memorandum?

Mr. PATTERSON. That is true, Mr. Chairman, but this witness is not testifying from a memorandum. He has prepared a story, which he now seeks to introduce in evidence as his testimony.

I have no objection to his refreshing his recollection from the memorandum, but I do object to his offering testimony in the form of a written statement, when he is here in person and able to testify.

Mr. KLEIN. That is quite common practice, as far as I know, before all governmental boards, and I thought it would save a considerable amount of time, and more exactly and accurately, as accurately as possible, set forth the opertions of the company.

Chairman MADDEN. Do you have any other copies of that statement available, Mr. Klein?

Mr. KLEIN. Yes, sir.

Chairman MADDEN. Which you can place in the hands of counsel?

Mr. KLEIN. Yes, Mr. Chairman. In fact, I would like to eventually offer it in evidence. I have other copies, but without the photographs which I desire to introduce in evidence while the witness is reading his statement

into the record, to give a clear picture to the Board of just what the business of this company is, and just what this company does in its business.

Chairman MADDEN. I think the witness may read his statement.

Mr. KLEIN. And shall we, as a matter of record, after he has read the statement, introduce it in evidence? I would like the photographs—they are true and correct photographs—also made a part of the record, so that if these proceedings are carried on that we may have them as part of the record.

Chairman MADDEN. Well, we will pass on that when we know what it is about.

Mr. KLEIN. Yes.

Q. (By Mr. KLEIN.) Would you read that statement which you prepared, Mr. Vosler?

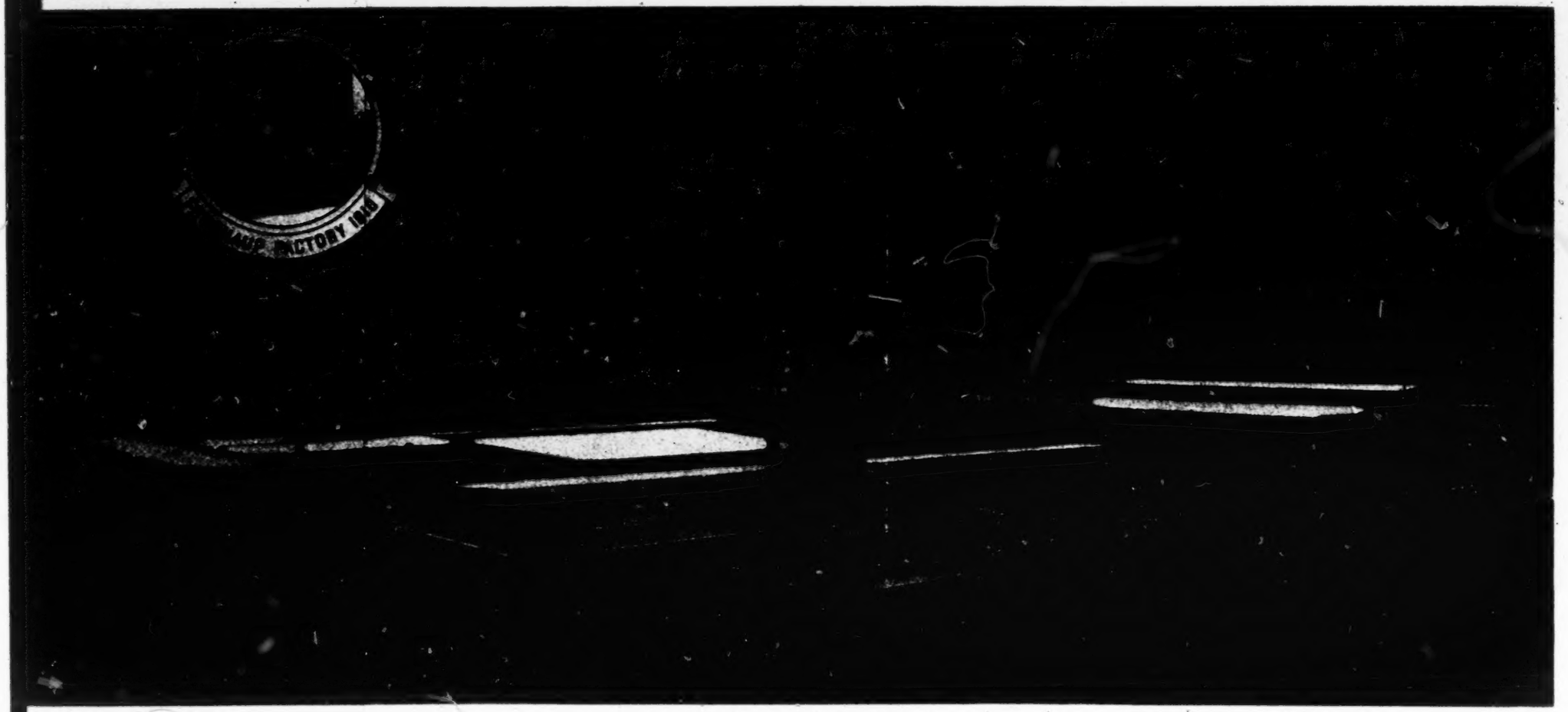
A. The Fruehauf Trailer Company is primarily engaged in the business of manufacturing trailers, semi-trailers, carryalls, and parts and accessories therefor. Its business is essentially that of converting and fashioning raw, unfinished and other materials through an intricate and involved manufacturing process into a completed and different form, that of the finished trailer product.

The purchase of raw, unfinished and other materials used in the manufacture of the trailer prior to the manu-
21 facturing operation and sales of the finished product after the manufacturing process is completed is merely incidental to this main operation of the Company, as it is an incident to any manufacturing business, and, as will be pointed out hereafter, is distinct, separate, and apart therefrom.

The Fruehauf Trailer Company, although incorporated in 1918, traces its beginning to the blacksmith shop and wagon works owned and operated in Detroit, Michigan, by August C. Fruehauf in 1897. With the growth and development of the automobile business the trailer business grew up—first from a clumsily, slow-moving wooden trailer to its present highly developed steel-framed, covered body, power-braked, scientifically engineered trailer. In the development and growth of the Fruehauf Trailer Company before and after its incorporation, August C. Fruehauf, himself, worked and labored in the first small shop hand in hand with the men employed by him. He was a laboring man and worked with laboring men.

As the little business grew and developed, his sons, Harvey (now president of the company) and Harry (now vice president) and I came into the business and took a hand—and the earnings for the most part continually were put

FRUEHAUF EXHIBIT 1-A



Exterior of present plant at Detroit

back into the business, for larger factory, more machinery and equipment, for larger production and for more and more employment of men. Today, the factory covers about nine acres and approximately 700 men are em-
22 ployed in the manufacturing and production of trailers.

The seven men involved in these proceedings were men who were formerly employed in production and manufacturing work.

The Fruehauf Trailer Company has only one factory in Detroit, Michigan, and all of its manufacturing and assembly operations are exclusively carried on at that plant in Detroit. It does not conduct any manufacturing or assembly operations outside of this plant or outside of the State of Michigan.

To give this Board a graphic picture of the operations of the Fruehauf Trailer Company, I thought it would be helpful not only to describe these operations but to illustrate them by photographs of the factory and of actual operations in the factory. The first is a picture of the exterior of the present factory located at 10940 Harper Avenue, Detroit, Michigan.

(The witness produced photograph, which will later be marked "Respondent's Exhibit 1-A.")

Q. (By Mr. KLEIN.) These are all actual photographs and true pictures of your operations, are they not?

A. Yes, sir.

Mr. CARMODY. Taken how recently?

The WITNESS. Within three years; possibly two years.

Mr. CARMODY. But none this year?

The WITNESS. I am not sure that they were.

Q. (By Mr. KLEIN.) They all correctly show what
23 your present operation is?

Q. (By Mr. CARMODY.) And there have been no changes in operation since they were taken?

A. No, sir.

Q. Either in equipment or lay-out?

A. Except as equipment may have been added.

Mr. CARMODY. So they are not quite true of the present operations.

Mr. KLEIN. They were true.

Mr. CARMODY. They were true as of the date the photographs were taken. Shall we say that?

Mr. KLEIN. No; I don't think that is quite fair. I think we might say that there is added equipment, but the character of the equipment and operations is alike. There may have been changes here and there, but it is essentially a true and correct picture of the present day operations.

The WITNESS. This photograph follows. [Indicating photograph.]

Chairman MADDEN. Yes.

A. (Continuing.) Prior to the manufacturing operations in the factory, it is necessary to have the various raw, unfinished and other materials in the manufacture and construction of the trailers delivered to the factory at Detroit.

Materials are bought from different companies, who
24 we believe are best suited to furnish these materials and to best serve us. Some of the materials are shipped in to the factory from out of the State and some from within the State of Michigan.

It so happened that in 1934, because of the nature of the material required that more than 50 per cent was shipped to the factory from out of the State. However, the materials were and are bought through the purchasing department under the direction of Harry H. Fruehauf at the main plant at Detroit.

Most of our suppliers of materials have Detroit offices. Some out of the city companies also have Detroit warehouses, and at all events our suppliers make the contact with us and sales of materials to us at our plant in Detroit.

Some of the materials purchased are purchased in a raw condition; others are partially manufactured, but for the most part are in an unfinished rough—"state", that should say——

Q. (By Mr. PATTERSON.) "Rough state", Mr. Vosler?

A. Yes, sir. (Continuing.) Requiring numerous and various manufacturing operations at our factory at Detroit before they are ready to be used in the assembly of the trailer. A few other items are purchased in a completely finished form. The principal items used by us in the manufacture of trailers are as follows:

For the chassis:

Frames: The side rails and some of the cross members of the trailer are purchased from factories that have
25 large presses. Some cross members are manufactured entirely by us from sheet steel which we buy in the rough, and which require a number of manufacturing operations until they are ready to be molded into and made a part of the trailer.

Axles are purchased as rough forgings from companies having large drop hammer equipment. These axles are forged according to different standard sizes and come to us as rough, unfinished forgings, and before these axles are ready to be used in the assembly of the trailer we must take the axles through a number of different involved manufacturing and machine operations at our plant in Detroit, such

as turning operations on a lathe, grinding operations, drilling operations, each being done on a separate machine and requiring separate handling.

Springs are purchased in a completely manufactured form ready for assembly, and for the most part these springs are supplied by a Detroit manufacturer.

Brake parts used in our large trailers are almost completely manufactured by us at our plant from rough casings and forgings which are purchased and delivered to the plant according to standard specifications. The materials required for this are rough castings for brake drums and the materials for brake linings. Most of these forgings are supplied by Michigan companies.

Wheels for the most part are purchased completely manufactured and are practically ready for assembly.

26 Wheel bearings are also purchased in a finished form ready for assembly, as are rims, spacer bands and rubber tires.

In addition to these materials we purchase a very considerable amount of malleable castings and steel castings, all in rough form, which require a number of machine, finishing and drilling operations at our plant at Detroit before they are ready to be used in the assembly. Most of the foregoing materials require a considerable amount of processing, machine and factory work at our plant at Detroit. With the exception of rims, wheels, roller bearings, tires, and springs——

Q. (By Mr. PATTERSON.) Tires, did you say? Did you add "tires" there? That isn't in my copy.

Mr. KLEIN. It should be.

A. It should be.

Mr. PATTERSON. I see. "Tires and springs."

The WITNESS. Yes, sir. (Continuing.) The major portion of the finishing and manufacturing operations must be done by us at our plant at Detroit of these various materials delivered to the plant prior to the manufacturing operations.

The chief materials used in the construction of trailer bodies are lumber and sheet steel. Most of the lumber used is oak, ash, and hickory, with some yellow pine. The hard woods come to us rough, and all of the dressing and manufacturing is done at our plant at Detroit.

The yellow pine we buy is used exclusively for

27 flooring and has been tongued and grooved and partially manufactured. It has to be cut to length at our plant and holes drilled for fastening to the floor and other finishing operations.

For the most part, the lumber comes from the southern part of the country.

Sheet steel for bodies is used by us in large quantities. These sheets come to us in standard sizes and are cut and formed, and otherwise worked upon in our factory in the body building and other departments in the construction and manufacture of a trailer.

In the building of the trailer body, which is fastened to and built upon the chassis, there is required a very considerable amount of labor and manufacturing and construction work, and the materials for the most part are taken in an almost unfinished form and fashioned in the operations at the plant at Detroit.

As has been pointed out hereinbefore, these materials are all purchased through our purchasing department at our plant at Detroit. Such materials which have their source outside of Detroit are shipped to us f. o. b. Detroit, or with freight allowed to Detroit. The lumber is shipped by rail.

A number of the materials are delivered by truck and trailer, and a small amount of the materials are shipped by boat.

Q. (By Mr. PATTERSON.) "To us." "Shipped to us
28 by boat", it says here; is that right?

A. I beg your pardon; that is right. For the most part, the risk of transit is upon the shipper, and title vests in us upon delivery to our plant at Detroit, although there may be instances where this is not the case.

The purchase of raw, unfinished, and other materials is completely separate and distinct——

Mr. CARMODY. Please; I can't quite hear. There are some of these words I am missing.

(Mr. Carmody raps for order.)

Mr. CARMODY. Go on.

A. (Continuing.) From the manufacturing and production in which these materials are later used. The materials when delivered to the plant at Detroit are kept in a material inventory and commingled with other materials of like character in the inventory at the plant. For the most part, the materials are kept in this inventory for a month, and some times upwards of two, three, and four months, before they are manufactured and become a part of an assembled finished trailer.

A smaller supply of the completely finished materials is kept on hand, than the materials which require extensive manufacturing operations.

These materials, with few exceptions, are purchased for our various standard specifications. Generally, when
29 the materials are purchased we do not know into what particular trailer they may become a part. Materials

are bought in anticipation of orders for trailers being obtained at some time in the course of business.

The materials come to a complete stop at our factory at Detroit. The delivery of materials to the plant at Detroit precedes the manufacturing operations normally by from one to three months, and then the material leaves the factory at Detroit only in a completely different, changed, finished and manufactured form, which is the result of the manufacturing operations.

On assessment day materials then on hand are assessed by the city of Detroit, county of Wayne and State of Michigan officials under the personal property tax law as being property located and having a situs in the city of Detroit, and we are required to pay a personal property tax on this material inventory located at the plant on assessment day each year to these authorities.

The seven men involved in these proceedings were in no wise employed in the purchasing department or the shipping department, and are not connected whatsoever therewith.

As I said at the outset, the Fruehauf Trailer Company is primarily engaged in the business of manufacturing. Only a few men are required to check up and look after purchases. The principal operation starts when the worker comes to the factory and takes part in the various involved and intricate manufacturing operations which change the raw, unfinished and other materials into a more complete and finished form.

The manufacturing operations are performed upon the various materials from the material inventory at the factory, which has been there from one to three or four months, depending upon the nature of the material. About 700 persons are employed by us in the manufacturing and production of the trailers.

First, we have our engineering department of twenty-five to thirty-five men, who design and engineer layouts of trailers and parts thereof.

Then there is the planning department, which is the clerical division of the production department of the business, supervises our inventory and materials from the time they are received until they are turned over to the shipping department in finished trailers. This department employs from twenty to thirty men.

Our tool room employs from ten to twelve men. These men manufacture and make fixtures and dies necessary for various operations. They are also responsible for the repair and maintenance of this equipment. They are highly skilled men, able to operate practically any kind of a machine that the average plant might own.

In the machine shop we employ approximately one
31 hundred and twenty-five men on two shifts. In this department is most of the metal working machinery, including drills of several different kinds. Vertical drills—radial drills—single spindle and multiple spindle drills—milling machines—various kinds of lathes, bullards—heavy and medium duty screw machines—other special machinery which has been made for our own particular business—and a number of other machines of various kinds. Here all of our rough castings enter for machine work.

Axles and other forgings are completed from the rough stage in this department and are then turned over to the inspection department, and finally to the finished stock division, preparatory to being assembled in a trailer. Some of these men are thoroughly skilled workmen, but, on the whole, they would probably come under the general classification of semi-skilled men.

These operations result in changing raw or rough unfinished materials to a highly manufactured, finished state. These operations include sawing, drilling, tapping, turning, milling, grinding, which includes rough grinding and finished grinding, broaching, pressing, machine riveting, hand finishing and bench assembly, and inspection operations.

There are probably several hundred different machine operations required on different materials necessary in the manufacture of a trailer. There are over two hun-
32 dred different parts requiring variation of these manufacturing operations in each trailer. Photographs of some of the different parts of the machine division operations are set out to better illustrate the type of work.

(Witness produces photographs which will later be marked "Respondent's Exhibits Nos. 1-B to 1-D.")

Q. (By Mr. KLEIN.) Those photographs correctly show your present day machine operations, do they not?

A. Yes, they do.

Q. Those were taken right in the factory at Detroit?

A. Yes.

Q. (By Mr. CARMODY.) Is all that belt driving still there?

A. Most of it.

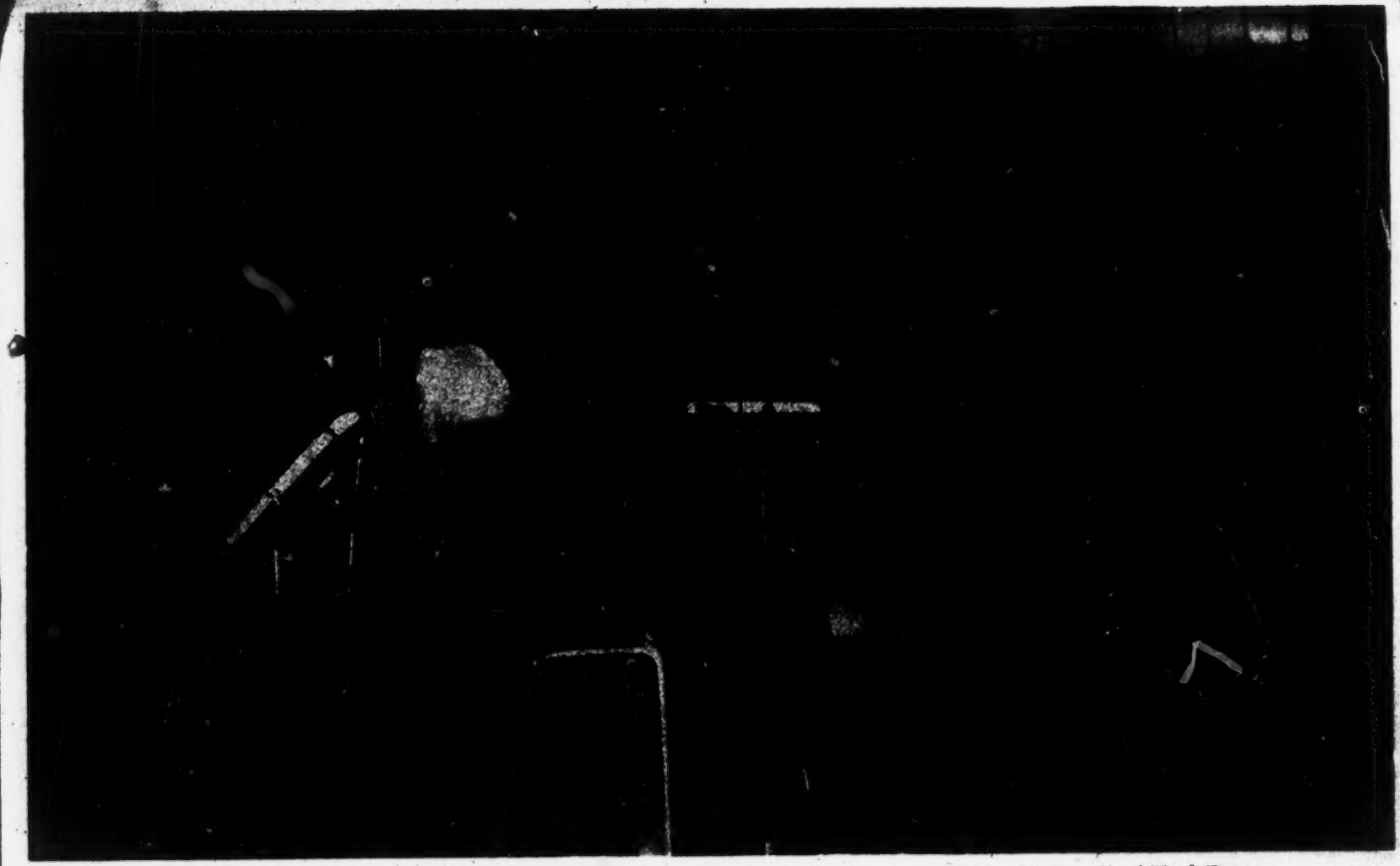
Q. You have not changed your units from any of that—your unit drive?

A. Not that I recollect.

Mr. CARMODY. That is all.

A. (Continuing.) The frame shop, or steel plant, in which Chaloux, Coonrod, and Milne, three of the seven men involved in these proceedings were employed, build the main frame of the trailer. The various parts necessary in the assembly of the frame are delivered here from other

All machining of Fruehauf parts is done in the Fruehauf machine shop. Here is shown one corner of the 14,000 square feet of floor space devoted entirely to precision manufacturing



All jigs, fixtures, and dies used in the manufacturing of Fruehauf Trailers are built in this Fruehauf Tool Department—1,540 square feet of floor space

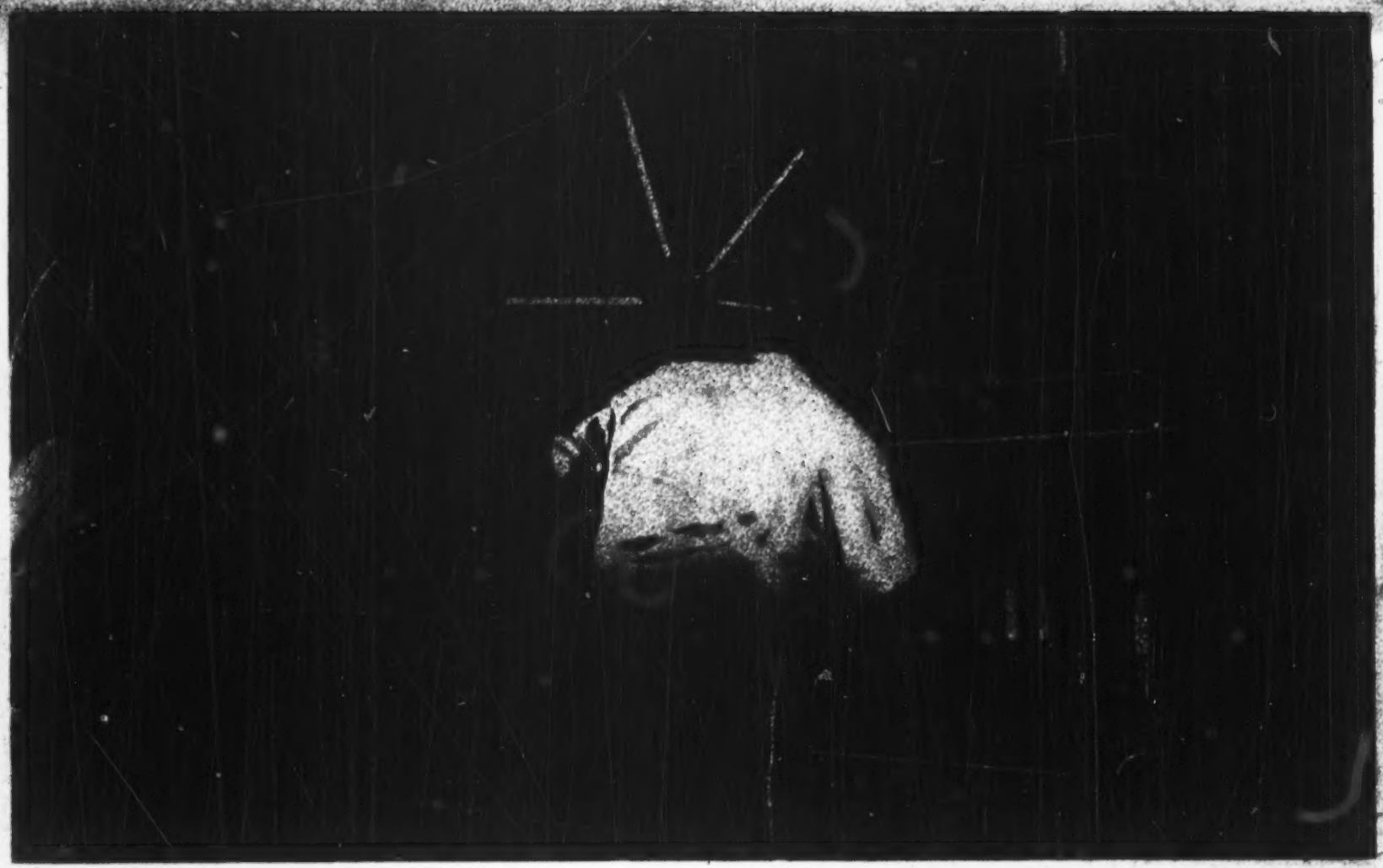
FRUEHAUF EXHIBIT 1-C-2

Eight distinct machining operations are performed on every Fruehauf I-Beam axle with this battery of machines

FRUEHAUF EXHIBIT 1-C-4

Illustrating the special furnace and the 75-ton hydraulic press used in the accurate cambering of Fruehauf I-Beam axles

FRUEHAUF EXHIBIT 1-D-2



Cost-cutting quantity production is aided by a group of multiple drills which drill as many as 24 holes in one operation

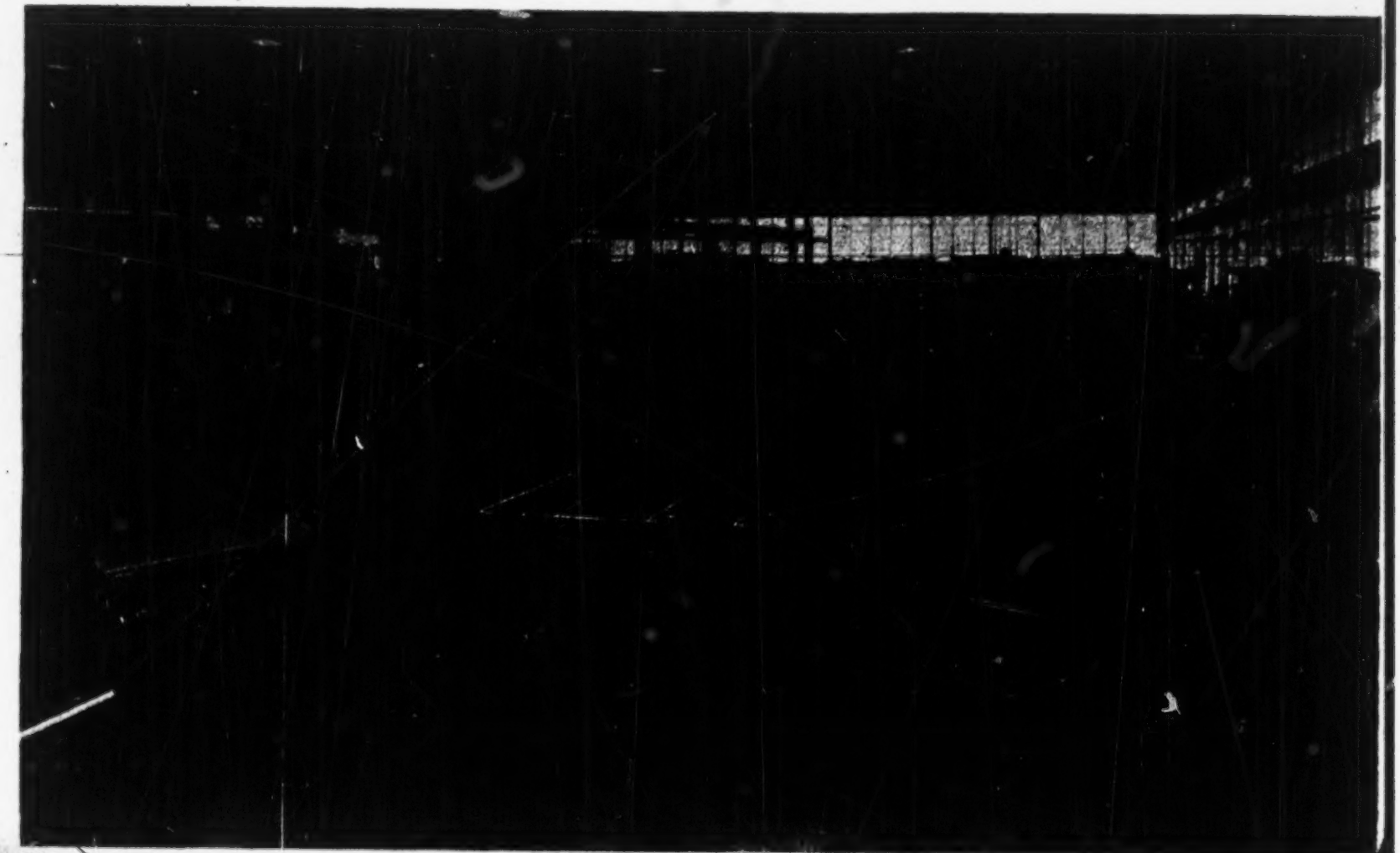
FRUEHAUF EXHIBIT 1-D-4

A special machine designed and built by Fruehauf for the machining of brake drum to insure absolute accuracy in diameter as well as a perfectly smooth braking surfac

FRUEHAUF EXHIBIT I-D-5

Each drum is individually tested after machining

FRUEHAUF EXHIBIT 1-E



The Frame Department—33,800 square feet of floor space. All Fruehauf frames are [illegible]

departments. This department prepares the frame members for assembly.

The frame is laid out by layout men to indicate where holes are to be punched or drilled and laid out for
33 length, width, etcetera. The fitting together of the frame, riveting and welding, is accomplished here.

Some of the castings which have been completed in the Machine Shop, are attached to the frame in this department this being a riveting process. In this department we have a few layout men who are considered the more skilled type of steel worker. These men must be able to read blue prints and have a thorough knowledge of steel work in general.

The riveters work in a gang, including one rivet heater, one who catches the heated rivets as they are tossed to him, and a fitter who removes the bolts from the frame preparatory to the rivet being inserted, and a hammer man who operates an air hammer, and bucker-up who holds a heavy bar against the other side of the rivet. The hammer man is generally classified highest in this group. These men would all be rated as semi-skilled workmen. If one of the men in the gang of this operation is not efficient or does not work in harmony with the other men in the gang in this work, the production is slowed up, the efficiency of the crew as a whole is lowered.

The failure of one man to work with the other men in the crew operates to the disadvantage and detriment of the other of his fellow workers in the crew. It was in this department requiring highly efficient work and work in a team that three of the seven men involved in this proceeding were employed.

A picture of a part of the frame department in the
34 factory is hereto attached.

(Witness produces photograph which will be later marked Respondent's Exhibit No. 1–E.)

Q. (By Mr. KLEIN.) Does that accurately show a part of the frame department as it operates today?

A. Yes, sir. There are press men who operate punch presses—drill press men—metal saw operators—one crane operator—and a few other workmen doing miscellaneous jobs in this department. Practically all of the men in this department would be considered semi-skilled with a few who do nothing more than common labor.

In our assembly department we bring the frame together with other parts of the trailer. These parts are prepared in the stock room and parts are delivered complete to the assembly floor for each frame as it becomes ready for assembly. We employ forty to fifty semi-skilled workmen in this department.

Perhaps one of the chief values these men have as a result of experience, is that they become acquainted with the various types of trailers that we manufacture and are able to put them together better and more quickly than new men would. These men attach all of the parts to the trailer, including the springs, axles, U-bolts, roller bearings and assemble the wheels and tires. The brake mechanism is attached hereto and in as much as all of these brakes are today power operated, these parts are also assembled in this department.

35 At the front end of the trailer the fifth wheel assembly and the support assembly is also attached. The latter is the structure which carries the auxiliary wheels on which the trailer rests when disconnected from the tractor truck. When the trailer leaves this department it is complete in so far as the chassis is concerned, and it is delivered to the paint department. Peterson, one of the seven men involved in this proceeding, was employed in a certain phase of the assembly department. A picture of part of the assembly department is here shown.

(Witness produces photograph which will later be marked Respondent's Exhibit No. 1–F).

Q. (By Mr. KLEIN.) Does that accurately show the assembly as it goes on today in your factory?

A. Yes, sir. In the paint department, we employ from fifteen to twenty painters. All of our painting is done by spraying and most of this follows a standard routine, although trailers are painted a special color to meet customers' requirements.

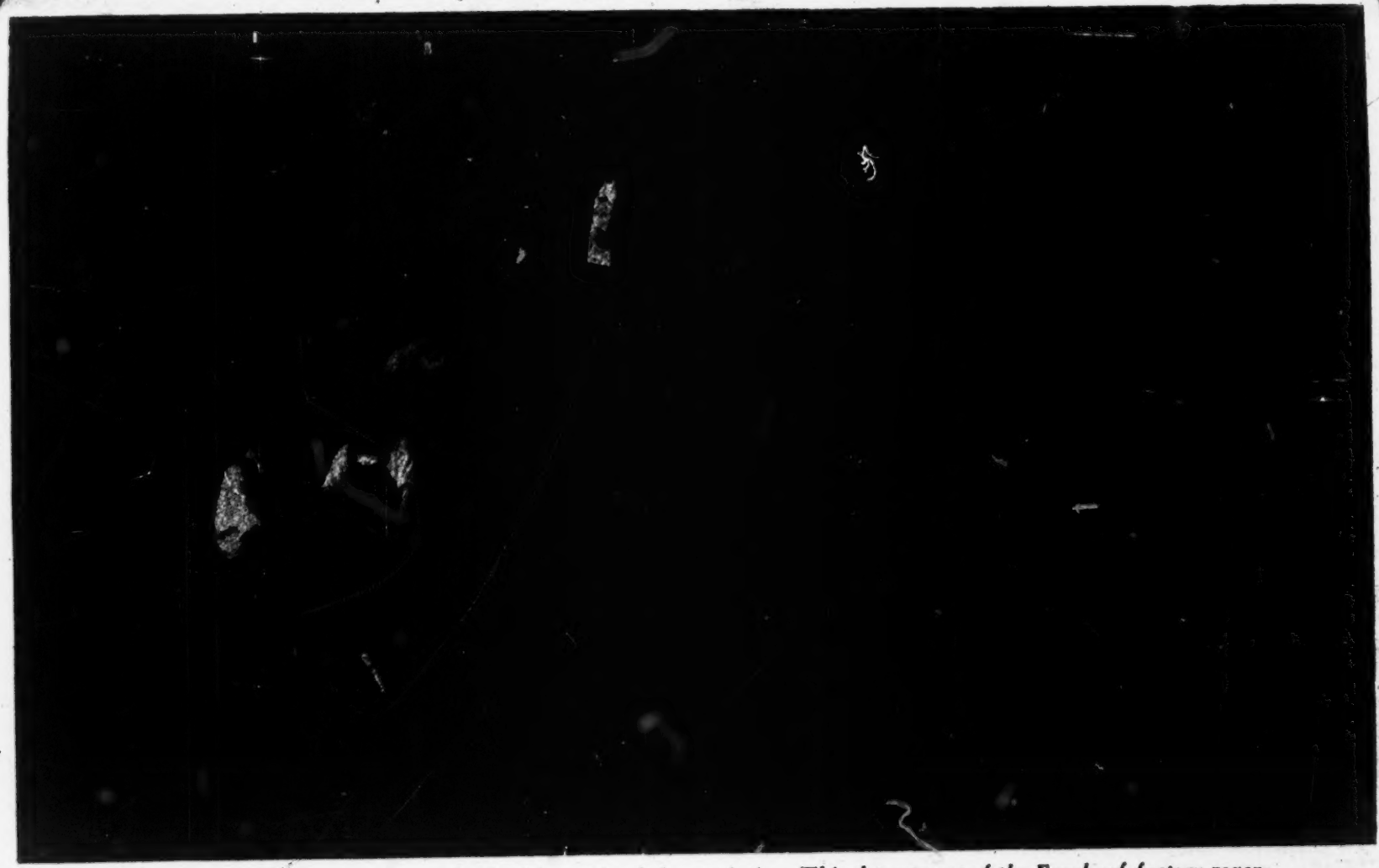
Blacksmith shop: This department employes fifteen to twenty men. They handle certain operations by bending and forming, which require heating of metal in a blacksmith's forge. The blacksmiths themselves are skilled workmen, but helpers and others in this department could

36 not be so considered.

In the body shop, in which Beck, Trusch, and Weinmann—three of the seven men involved in this proceeding, were employed, we employ from two hundred and fifty to three hundred men.

These men are divided into several groups. A few are skilled workmen, but the majority, representing at least 80 percent, would be considered semiskilled men. In this department, we have several woodworking machines for sawing, dressing and otherwise preparing lumber for use in the bodies. We have a number of metal working machines, including particularly presses and brakes.

These machines are used for forming sheet metal into various shapes necessary for assembling in the body and for



Installing underconstructions—the final operation before painting. This department of the Fruehauf factory covers nearly 10,000 square feet of floor space

FRUEHAUF EXHIBIT 1-J-5

The final requirement of a modern body plant—an up-to-date paint department. Fruehauf's painting and lettering division, one end of which is shown

FRUEHAUF EXHIBIT 1-I-4

Every Fruehauf workman is specially trained in his particular work. Many of these craftsmen have been on the job with Fruehauf for over twenty years

FRUEHAUF EXHIBIT 1-H3

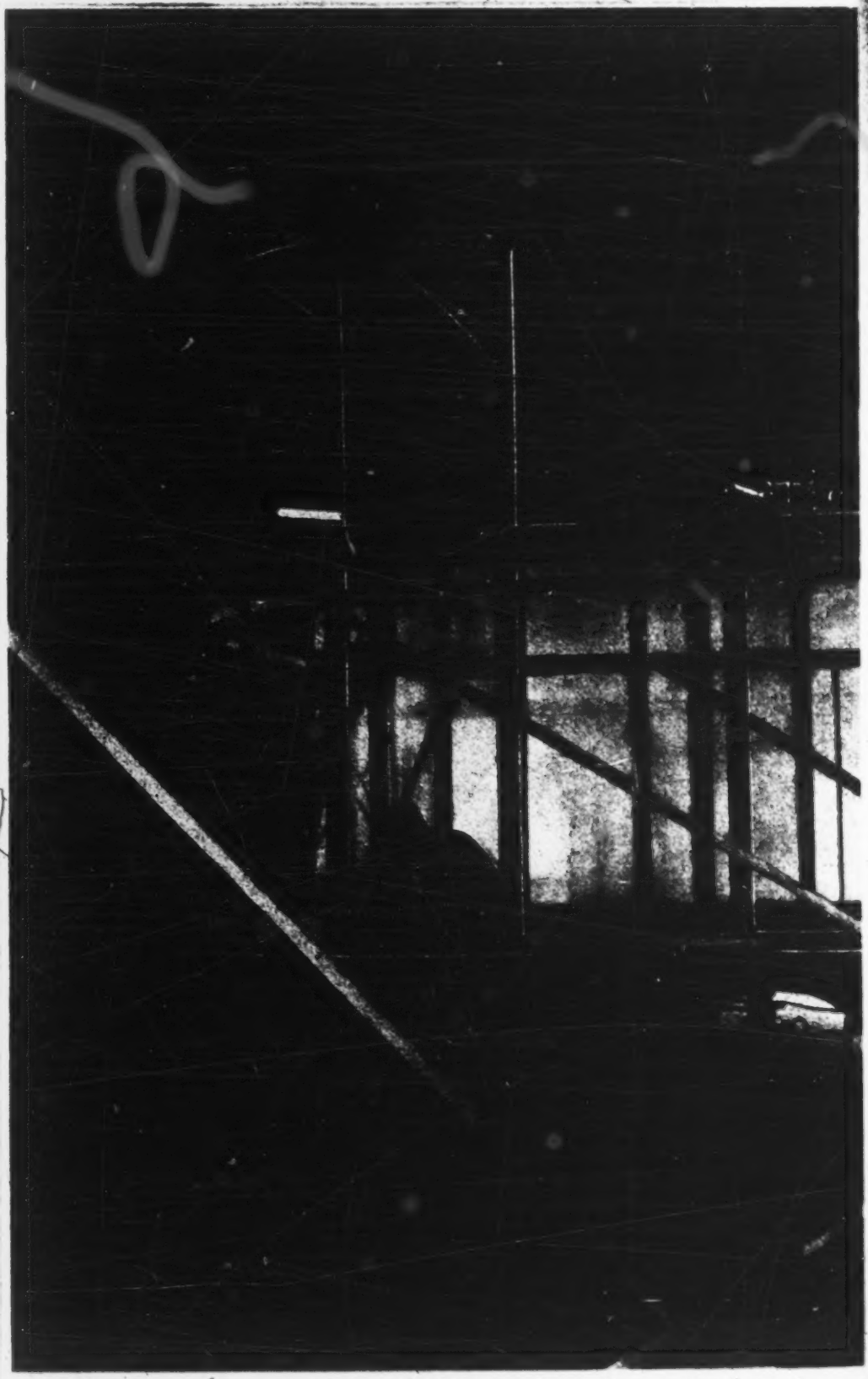
One corner of the Fruehauf woodworking division. In addition, 4,000 square feet of floor space is devoted

FRUEHAUF EXHIBIT 1-A2

One of the 300-ton presses used for forming body panels, roof bows, etc.—an important factor in lowering manufacturing costs

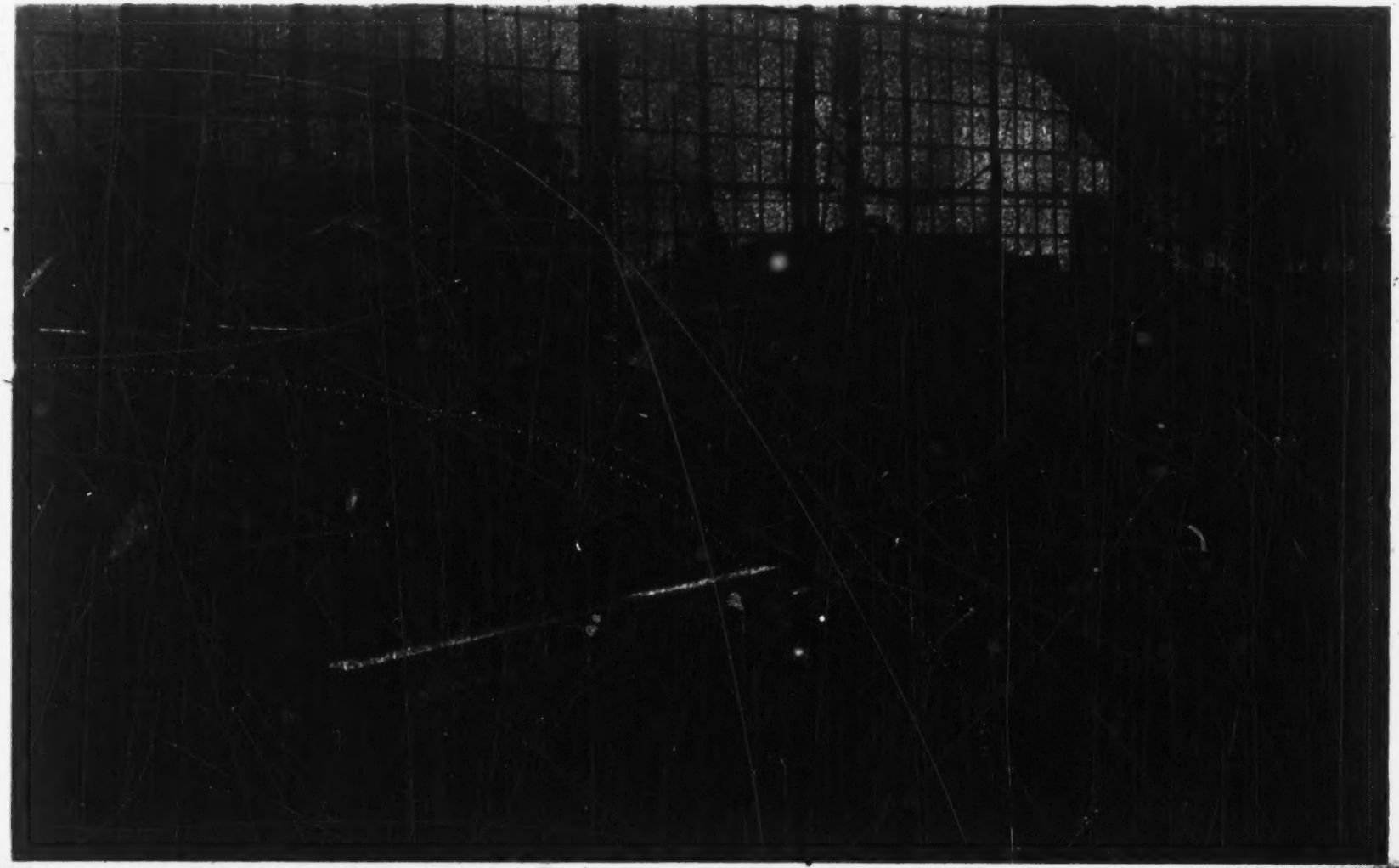
FRUEHAUF EXHIBIT 1-H1

FRUEHAUF EXHIBIT 1-H3



Sound design, quality materials, and skilled workmanship are the basis of every Fruehauf body

FRUEHAUF EXHIBIT 1-G-2



Squaring shears and leaf brakes are necessary equipment for the modern body plant if costs are to be minimized

FRUEHAUF EXHIBIT 1-G-1

FRUEHAUF EXHIBIT 1-G

Fruehauf bodies are built by Fruehauf. The body division, a partial view of which is shown here, is one of the largest in the country dev

FRUEHAUF EXHIBIT 1-H1

AUF EXHIBIT 1-G-1

is one of the largest in the country devoted to commercial body manufacturing. It comprises 82,230 square feet of floor space

otherwise preparing the steel for the body. We have a few layout men in this department.

In the case of special bodies, some of the steel work and some of the lumber must be laid out from blue prints. The greater number of men working here are known as body assemblers. The lumber and steel has all been shaped and prepared for assembling in previous manufacturing operations at our factory, with the exception of the drilling of holes and some minor operations of that nature which would be done by the assemblers. They fit the various parts together and complete the body.

Many of these men are carpenters, others are men who have had experience in other body shops, and a few who
37 come from the automobile company body plants. The majority of these men could be considered semiskilled.

In various phases of body building two or three men work in teams, as may be seen, and unless there is the efficiency in workmanship and harmonious cooperation, the production will be delayed, to the detriment of the other fellow workers on the team. Three of the men involved in this proceeding were employed in this department as set forth above.

Photographs of the various parts of the body department of the factory at Detroit, showing the men in operation, are hereto attached to better illustrate work of this character.

(Witness produces photographs which will later be marked Respondent's Exhibits Nos. 1–G to 1–J.)

Q. (By Mr. KLEIN.) Do those photographs correctly and accurately show the operations in the body department as they go on today and are carried on today?

A. Yes, sir.

Q. (By Mr. CARMODY.) What is the date of the photographs? Let us get that in. Have you some idea of the date when the photograph was taken?

A. I could not give you the exact date.

Q. Could you give it within a year; in what year was it taken?

A. In the year 1934 or 1933.

Mr. CARMODY. In 1933, or 1934. All right. That is all.

38 Q. (By Mr. KLEIN.) They accurately show the operations and as they go on today in that plant, do they not?

A. Yes.

Chairman MAPES. What was the occasion for the making of these photographs?

Mr. PATTERSON. Mr. Chairman, I believe I shall be able to develop that on cross examination. I know about these photographs. I have seen them before.

Mr. KLEIN. They use them in booklets—I am sorry.

A. They were prepared in a booklet used by the sales department.

The millwright and maintenance department employs ten to twelve men. These men are responsible for the maintenance of machinery and plant, including electric motors, electric wiring, et cetera. For the most part they are semi-skilled workmen.

The inspection department includes about twelve men who are responsible for seeing that the work is properly done in the various departments.

Besides these departments, we have our stockroom, small group of factory time clerks, watchmen, sweepers, boiler room operators, et cetera.

We, are, at the present, employing approximately seven hundred men in all of these departments. These men do all of their work at the factory of the company at De-
39 troit, Michigan. Their work starts at the factory and finishes at the factory. They have nothing to do with the purchase of materials. When this material is ordered and when it is received we have no idea where it will ultimately be delivered. We don't know whether it will be used in trailers delivered in Michigan or in Texas. There is absolutely no way for us to determine this. Therefore, we cannot wait until we have orders to buy material. We must buy our material on an estimated anticipation covering a period ahead. These men have nothing to do with the shipment of the finished, manufactured product. Their work is to change the raw and unfinished materials from a rough state, through an involved and complicated manufacturing process, into a different and completed product.

Their work is completed before any sale or any shipment is made, and has no direct relationship thereto.

From statistics that we have, we can fairly state that our workmen in the manufacturing and production departments receive higher wages than those paid to similar classes of employees by companies engaged exclusively in the manufacture of trailers, as we are.

The sale of trailers manufactured by us is under the general supervision of Gerald Chamberlain, vice president in charge of sales, whose office is at the plant in the City of Detroit, Michigan.

Orders for trailers are taken on a standard form of
40 order blank, and are subject to the approval of the officers at Detroit.

We have about thirty one branch sales offices in New York, New Jersey, Massachusetts, Connecticut, Pennsylvania, Indiana, Georgia, Louisiana, Kansas, Missouri, Nebraska,

South Dakota, and Michigan. These branch offices are operated by our employees and are generally located in a store or small garage building, with space sufficient to display from three to five trailers, except in the very large cities where a display of between twenty or thirty trailers is made.

A small repair shop is also operated in connection with these branches to service trailers sold through the branches. Except where trailers are sold from the stock of these branch offices for cash and at a standard list price, all orders taken by the branch offices are subject to the approval of the officials of the company at Detroit.

We also sell a large number of trailers to distributors and dealers, who operate in cities in some of the above States, and in other States, in this country.

In cases of sales made to distributors and dealers, the orders are all approved at the factory office at Detroit. Sales are for cash or on installment payments under conditional sales contracts or chattel mortgages. Credit of the distributor, dealer, or customer in cases where sales are made through branches are approved by the credit department at Detroit. Dealers and distributors for the most part handle their own resale paper, although in a small percentage of the cases we assist in financing some such sales upon the endorsement of the distributor or dealer.

41

Practically all shipments going to the eastern seaboard are sent by rail, as are most shipments to the Southern States. These shipments are generally f. o. b. cars Detroit. Shipments to destinations within three hundred miles of Detroit are practically all made by truck and trailer. Most of this hauling is done by an independent contractor, operating under a State permit granted to him, for which he is paid a certain contract price per haul according to the destination. Many customers themselves pick up the trailers purchased at the factory at Detroit with their own trucks. Where the points of destination are any branch offices, the company pays the cost of hauling. Where the shipments are to distributors, dealers or ultimate customers, they pay the freight and the risk in most instances is their's upon delivery to the hauler at Detroit.

Trailers shipped are in final and completed form upon delivery to the cars or to the hauler at Detroit. Sometimes for convenience in shipping the wheels and tires are removed. There is no assembly work conducted in any of our sales branches. All of our manufacturing and assembling operations are performed at Detroit. The shop equipment at the branch offices is limited solely to a general repair business of trailers sold by the branches.

42

The sales department is separate and distinct from the manufacturing division and from the purchasing department. The men in the manufacturing operations, and about 85 percent of our employees are engaged in the manufacturing operations, have nothing to do with the purchase of material nor with the sale or shipment of the completely manufactured product. Their work is to transform raw materials, through an involved manufacturing operation, and assemble the manufactured parts into a completed trailer. Their work starts at the factory at Detroit and ends at the factory at Detroit. The manufacturing operation succeeds the shipment of material to the factory, where the material comes to a complete rest and acquires a situs at Detroit.

The manufacturing operation precedes the sale, and particularly the shipment of the completed and manufactured product. The seven men involved in this proceeding were employed exclusively in manufacturing work at the plant at Detroit.

Q. (By Mr. KLEIN.) Mr. Vosler, does that accurately and correctly state what your operations are at the Fruehauf Trailer Company?

A. To the best of my knowledge, it does.

Q. And you are in charge particularly of the manu-
43 facturing division?

A. Yes, sir.

Q. And you are on the board of directors?

A. Yes, sir.

Q. Of the company.

A. Yes, sir.

Q. And you know the operations from beginning to end?

A. Yes, sir.

Q. Do these photographs which are attached to that Exhibit 1 accurately and correctly show the various phases of the factory operations as they are carried on today?

A. Yes, sir.

Q. And they correctly illustrate the various types of factory operations that you conduct at your factory today?

A. I believe they do.

Q. And at the time of the complaint involved in this proceeding?

A. Yes, sir.

Mr. KLEIN. I should like to offer that Exhibit 1, particularly in view of the photographs which I believe would be of great assistance, into evidence. I think it helps illustrate just what the work is. It is offered more by way of illustration than anything else.

Chairman MADDEN. When this comes to be a printed record here, if it ever should come to be such, how would
44 this—the typewritten stuff, of course, would be printed in the record, and the photographs would probably not be reproduced.

I wonder if——

Mr. KLEIN. Well, we have the plates available, and they can be printed and folded into the record in proper size. The plates are available, I understand, and, if not, they can be reproduced from these photographs and they can be folded into the record.

Chairman MADDEN. I wonder whether it would not be more convenient simply to introduce these photographs as separate exhibits, which are to be considered at the point where he, in the reading of his statement, discussed them?

Mr. KLEIN. Well, either way.

Chairman MADDEN. So that, instead of the whole thing, introduce them separately. What do you say to that, Mr. Patterson?

Mr. PATTERSON. I think it would be advisable, Mr. Chairman. We have now in the record his testimony, and these photographs could be inserted wherever he refers to them in his testimony. I have no objection to the introduction of the photographs.

Chairman MADDEN. I suppose if that is true, you had better count them out so that you can tell how many exhibits you have.

Mr. KLEIN. Yes. I thought they would better illustrate just what they did and that is why we offer them.

45 Mr. EDWIN S. SMITH. Just what store does the company set by these photographs in the presentation of its case? What do they add to the written description?

Mr. KLEIN. Well, I know, until I went out to the factory and went through every division of its operations, I did not have as complete an understanding as I thought before, and for any member of this board who must pass upon it, who has not had that opportunity, it will illustrate exactly what the work carried on in that factory is and what the working operations are, better from a photograph than what one gets by just hearing a verbal description.

Mr. EDWIN S. SMITH. Well, your intention is to show by the evidence here that the men who are involved in these complaints are engaged exclusively in assembly and manufacturing operations?

Mr. KLEIN. That is it exactly.

Mr. EDWIN S. SMITH. The photographs do not show these men. They show the operations in which they are engaged.

Mr. KLEIN. Yes; and instead of a certain man at a certain frame or certain machine, we can picture the complainants at that machine, and the board, in passing on it, will have before it just the exact operation that goes on, just by way of illustration.

Chairman MADDEN. I think that each one of the groups might be one exhibit, don't you see? Each stop-
46 ping place in the reading—sometimes there were several photographs, and at others only one. There were several which occurred at this point, we will say, exhibit 1.

Mr. KLEIN. Well, perhaps during the recess, so as not to take the time of the Board, Mr. Patterson and I can agree on the numbering of them.

Mr. CARMODY. You can also insert into the text, reference to exhibit so-and-so—in your text, and I think——

Mr. KLEIN. Yes.

Mr. CARMODY. That will tie it up for us, who have to read the record subsequently.

Mr. KLEIN. All right.

Mr. CARMODY. I would like to ask one question. Show him this photograph and ask him if that still represents the machine shop as it now operates.

The WITNESS. Yes; it does.

Q. (By Mr. CARMODY.) You still use that type of torque box, and that type of operation?

A. Yes, sir.

Mr. CARMODY. Is that so? All right; thank you.

Mr. KLEIN. On this phase of the testimony, if the Board please, that is, on the interstate operation, I believe that fully covers this point so far as the respondent is concerned. And, as I understand, when these exhibits are prop-
47 erly marked, that is, these photographs, they will be admitted into the testimony.

Mr. PATTERSON. I have no objection to that.

Chairman MADDEN. Yes.

Cross examination:

Q. (By Mr. PATTERSON.) Mr. Vosler, you have been connected with the Fruehauf Company for how long?

A. Since 1917.

Q. And the Fruehauf Company had its inception in 1917, is that right?—the corporation I mean.

A. No. It was incorporated in 1918.

Q. In 1918?

A. Yes.

Q. So you have been connected with it ever since it became a corporation?

A. Yes, sir.

Q. And has your work been substantially the same throughout the entire period of years?

A. No.

Q. Well, what different classes of work have you done?

A. Well, I started there as a bookkeeper and I have worked in and out of the plant, not taking part in any manufacturing operations, but when the plant was small, as it was at that time, I was pretty close to what was going on in the plant. I have worked in the sales depart-
48 ment; I have had charge of the sales department.

Q. The sales department of the Fruehauf Company is a very essential part of it, is it not?

A. It is naturally essential to sell what you make.

Q. Exactly. And the Fruehauf Company not only engages in the manufacture of trailers and semi-trailers, but also engages in the sale and distribution of the product which it makes?

A. Yes, sir. We——

Q. And that is true at the present time, is it not?

A. Yes.

Q. Now, Mr. Vosler, your company maintains branch sales and service stations throughout the country, does it not?

A. I pointed that out, I believe, here. We do have these branch offices.

Q. Now, you have a branch office in New York, do you not, Mr. Vosler?

A. At Long Island City, we do.

Q. Long Island City, New York?

A. Yes.

Q. And there are some employees there who are paid by the Fruehauf Company, are there not?

A. Yes, sir.

Q. How many?

A. I presume—I believe six or seven.

49 Q. And those men consist of salesmen and mechanics, do they not?

A. Chiefly salesmen.

Q. Are there any mechanics in New York?

A. Two mechanics.

Q. Two mechanics. Now, then, what is the purpose of maintaining two mechanics at Long Island City, New York?

A. They do general repair work on trailers that come in to be serviced.

Q. Now, as a part of the advertising that Fruehauf does, and as a part of the sales argument that Fruehauf uses, you tell your customers and prospective customers that Fruehauf services those trailers and trucks, do you not?

A. Yes, sir.

Q. Yes. Is there an inventory carried by the company in Long Island City?

A. Yes; we carry a parts inventory there.

Q. Could you tell me about how much?

A. I wouldn't be prepared to say; I don't know.

Q. Isn't it the general policy of the company to maintain an inventory at its respective branches of about five thousand dollars?

A. No; we have no fixed policy.

Q. You have no fixed policy?

A. No, sir.

50 Q. Well, now, isn't it a fact, Mr. Vosler, that these mechanics down at Long Island City, New York, not only repair trailers that are on the road, but service the new trailers at the time they are sold?

A. I can't imagine what service there would be on a new trailer.

Q. All right. A semi-trailer isn't any good, is it, unless it has a fifth wheel on the tractor?

A. That is right.

Q. Yes. And when you sell a trailer down in Long Island City, New York, a semi-trailer, you ship along a fifth wheel, do you not?

A. Unless there is one available in stock.

Q. Well, in any event, you either ship one down or there is a fifth wheel in the Long Island branch?

A. That is right.

Q. And when that trailer is sold to a customer, isn't it a fact that your mechanics affixes that fifth wheel to the customer's tractor?

A. Sometimes our mechanic does it; sometimes the customer's mechanic does it.

Q. But very frequently your mechanic does that?

A. Quite often.

Q. Yes. So that the usefulness of a semi-trailer is not completed until after you have affixed a fifth wheel

51 or a connecting link, as you call it, to the customer's tractor?

A. Perhaps that is true.

Q. Yes. Now, then, you have a branch in Philadelphia, have you?

Chairman MADDEN. May I just ask there?

Mr. PATTERSON. Surely.

Q. (By Chairman MADDEN.) Do all of these parts which are carried at the Long Island City branch and at your other branches, do they originate in Detroit; are they all shipped out there from Detroit?

A. I think for the most part they are, sir.

Mr. PATTERSON. Are you through, Mr. Chairman?

Chairman MADDEN. Yes.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, you also maintain a branch at Philadelphia, I believe?

A. Yes, sir.

Q. How many employees does the Fruehauf Company have there?

A. I expect about the same number, six or seven.

Q. Five or—six or seven?

A. Something like that.

Q. And your employees consist of four or five salesmen and two or three mechanics?

A. That is right.

Q. And the process of affixing a fifth wheel or a connecting link is conducted at Philadelphia just the same
52 as you have described in Long Island City; is that right?

A. Yes, sir.

Q. You also have a branch in New Orleans, do you not, Mr. Vosler?

A. Yes, sir.

Q. How many employees of the Fruehauf Company are located there?

A. I think there are two salesmen and one service man there.

Q. And the work of the service man is about the same as you have described?

A. Yes, sir.

Q. You have a branch also at Kansas City, Missouri?

A. Yes, sir.

Q. How many employes does the Fruehauf Company have in Kansas City?

A. Five or six. I really cannot tell exactly.

Q. And are couple of those employees service men?

A. One or two.

Q. Do you also have a branch at Chicago?

A. Yes, sir.

Q. And how many employees does the Fruehauf Company have there?

A. Probably eight or ten.

Q. How many mechanics do you maintain there?

A. Two or three.

53 Q. Two or three?

A. Yes, sir.

Q. Do you have a branch in Los Angeles?

A. Yes, sir.

Q. You sell trailers in Los Angeles?

A. Yes, sir.

Q. And you sell trailers to the Newcomer-Fruehauf Company, do you not?

A. Yes, sir.

Q. That is a corporation separate and distinct from the Fruehauf Trailer Company, I understand?

A. Yes, sir.

Q. Does the Fruehauf Company accept the paper that—any of the paper on sales made by the Los Angeles Company?

A. No, sir.

Q. None of it?

A. No, sir.

Q. All of the sales made by the—is it Newcomer?

A. That is right.

Q. (Continuing.) Newcomer-Fruehauf Company, in Los Angeles—all of their sales are handled exclusively through them?

A. Well, as a matter of fact, we don't deal with this company any longer. We did a few months ago.

Q. When did you cease dealing with it?

54 A. Why, perhaps a month ago or six weeks ago.

Q. About a month or six weeks ago?

A. Yes.

Q. Do you have a branch in Los Angeles at all now?

A. We have no branch there.

Mr. KLEIN. That was not a branch, Mr. Patterson. That was a distributor.

Mr. PATTERSON. I am just asking him whether he has a branch there now.

Mr. KLEIN. I though it might be ambiguous. It was never a branch, just a distributor, independent of the company.

Q. (By Mr. PATTERSON.) Do you have any branch office of the company now in Los Angeles at all?

A. No, sir.

Q. You have not?

A. No, sir; we never had one.

Q. Do you still sell trailers in California?

A. I don't know whether we will or not.

Q. Do you have a branch at Omaha, Nebraska?

A. Yes, sir.

Q. How many employees does the Fruehauf Trailer Company have in Nebraska?

A. Probably six to eight throughout the State.

Q. And a couple of mechanics located down there?

A. One or two.

55 Q. And they also engage in the operation of affixing the fifth wheel to the customer's trailer, if the customer desires it?

A. Yes, sir.
Q. And do you have a branch at Des Moines, Iowa?
A. Yes, sir.
Q. How many employees there?
A. Six or eight.
Q. And a couple of mechanics too?
A. One or two mechanics.
Q. Now, where else do you have any branches of the Fruehauf Trailer Company?
A. We have one in Grand Rapids.
Q. Grand Rapids, Michigan?
A. Grand Rapids, Michigan.
Q. Do you have any other branches?
A. We have one at Jackson, Michigan.
Q. Any others?
A. Saginaw.
Q. Any others?
A. Buffalo, New York.
Q. How many employees in Buffalo?
A. Four or five.
Q. And a couple of mechanics there?
A. No; we don't have a mechanic there.
56 Q. You don't have. Just a sales——
A. That is right.
Q. Just a sales branch?
A. Yes, sir.
Q. Now, Mr. Vosler, does this company do any assembling work on tractors and trailers outside of the city of Detroit?
A. No, sir.
Q. You wouldn't call putting the fifth wheel onto the customer's tractor assembly, would you?
A. No, sir.
Q. What do you call it?
A. It is just a mechanical job.
Q. Just a mechanical job?
A. The same as repairing a trailer. It is only a matter of adding a few bolts with a stick of wood.
Q. Of course, the customer could not possibly use the semitrailer if he did not have a fifth wheel on his truck; is that true?
A. That is true.
Q. And you advertise extensively about the fifth wheel, don't you, the importance of the fifth wheel, the connecting link?
A. Yes, sir.
Q. Yes. And considerable stress is laid upon the connecting link that Fruehauf manufactures, as being one of a very good design?

57 A. That is right.

Q. Now, it is also a fact, is it not, that this company has a subsidiary in Toronto, Canada?

A. Yes, sir.

Q. Is that a wholly owned subsidiary?

A. Yes, sir.

Q. In what business is the Toronto Company engaged?

A. Chiefly in the sale of trailers with some assembly work.

Q. Oh, they do some assembly work in Toronto?

A. They do some assembly work in Toronto; yes, sir.

Q. Yes. They build the frames in Toronto, don't they?

A. No, sir.

Q. Do they build the bodies in Toronto?

A. No, sir.

Q. Well, what assembly work do they do there?

A. They purchase some of the bearings, some of the tires—purchase the bodies, but they don't do the work of manufacturing the bodies.

Q. Those are manufactured here?

A. No, sir.

Q. Where are they manufactured?

A. They are manufactured in Canada.

Q. By another company or Fruehauf?

A. No; a separate corporation. I don't know; they may be manufactured by anybody.

58 Q. I see. They buy the bodies made up?

A. That is right.

Q. And they may buy the frames made up?

A. The frames they buy from here.

Q. The frames they get here?

A. That is right.

Q. And then when they get the various parts, the axles, frames and wheels, in Toronto, they assemble them there?

A. Yes, sir.

Q. So that if I understand you correctly, the Toronto Company gets its frames from the Fruehauf Trailer Company here?

A. Not only the frames, but they get the springs——

Q. What else do they get from the Fruehauf Trailer Company in Detroit?

A. They get the springs, axles, and some of those parts.

Q. The fifth wheel?

A. What they can buy in Canada they do buy in Canada.

Q. The fifth wheel?

A. The fifth wheel is made here; yes, sir.

Q. Now, that material, your frames, springs, wheels and axles are shipped from Detroit to Canada?

A. That is right.

Q. Then in Canada those various parts are assembled with the body which is bought there, into a finished trailer?

A. With other parts that are also bought there.

59 Q. Yes. Whatever essential parts there are that go into a trailer.

A. Yes.

Q. Now, does the Fruehauf Trailer Company have any other subsidiaries?

A. Not that I recall.

Q. Do you have a company in which the Fruehauf Trailer Company is interested in Wisconsin?

A. No, sir.

Q. Were you interested in a company there? I mean, was the Fruehauf Company interested in a company there?

A. Why, many years ago the company bought out the Warner Trailer Company over there.

Q. And what happened to it after Fruehauf bought it?

A. Simply consolidated it here with the Detroit plant.

Q. Is there any manufacturing done there now?

A. No, sir; there never was.

Q. Mr. Vosler, the Fruehauf Trailer Company was recently indicted in the United States District Court, was it not?

Mr. KLEIN. If the Board please, this is all incompetent. I know what Mr. Patterson has reference to. It has no bearing on the nature of our operations.

Mr. PATTERSON. Well, if the Board please, I anticipated an objection from the company to the introduction of this indictment in evidence, and it has a very material

60 bearing in this case for the reason that the 25 counts in this indictment charge this company with falsely representing that they shipped only trailers in 25 different cars in interstate commerce when as a matter of fact they were shipping axles, wheels, rims, fifth wheels, and everything else all over this country.

That indicates that the items covered by the various counts in this indictment—that there was assembly work being done elsewhere.

Mr. KLEIN. It does not.

Mr. PATTERSON. And that they must have attached fifth wheels to customer's trucks or they would not have been shipping them.

So that this indicates that parts of various kinds were being shipped all over this country, not only to customers but to the Fruehauf Trailer Company itself, and I therefore maintain that this indictment——

Mr. KLEIN. Now, ——

Chairman MADDEN. Mr. Patterson, haven't you covered that ground with the witness? Hasn't he admitted all that you claim there?

Mr. PATTERSON. No; if your Honor please, he has not admitted all of it.

Mr. KLEIN. What hasn't he admitted, Mr. Patterson? You are trying to make a stump speech about an indictment.

Mr. PATTERSON. I am not trying to make any
61 stump speech at all.

Mr. KLEIN. That is very obvious. Now, he has admitted that they sent repair parts from the factory to various branches, and he admitted that they sent fifth wheels and sometimes at a customer's request they take a loose fifth wheel and adjust it, onto the tractor. The tractor has to be connected some way or other, and it is just a connecting link between the truck and the tractor.

Mr. PATTERSON. If the Board please, this indictment shows that the Fruehauf Trailer Company has shipped wheels, axles——

Chairman MADDEN. Well, now, just a minute. As an indictment, of course, it does not show anything except the charge by some prosecuting body or other which you have not indicated.

Mr. PATTERSON. Well, may it please the Chairman, I have attempted——

Chairman MADDEN. Well, just a moment on that. You mentioned some things which you say are involved in this indictment about which you have not asked the witness at all, rims and what-not.

Why don't you develop those matters in full with the witness and it is entirely possible that whatever you have there will turn out to be merely cumulative evidence of no value at all.

Mr. PATTERSON. Well, Mr. Chairman, I have here a certified copy, under the seal of the United States Dis-
62 trict court, certifying to the correctness of the docket entries in the case of the United States versus the Fruehauf Trailer Company and Graham H. Proctor, the indictment which was filed in that proceeding, and a certified copy of the court's journal entry, in which the Fruehauf Trailer Company pleaded not guilty to the indictment.

And a certified copy of the court's journal entry in which the Fruehauf Trailer Company withdrew its plea of not guilty and entered a plea of guilty; and a certified copy of the court's journal entry imposing a fine.

Now, this indicates, may it please the Board, that 25 separate carload shipments made by this company to vari-

ous parts of the United States, to which the company has entered a plea of guilty, thereby admitting all of the essential allegations of the indictment.

And for that reason, if for no other, except to show the extent of this company's interstate activity, I submit that they certainly shouldn't have any objection to the introduction in evidence of certified copies of these papers.

Mr. KLEIN. If the Board please——

Chairman MADDEN. It is not a very——

Mr. KLEIN. Pardon me.

Chairman MADDEN. It is not a very nice thing, after all. I think we will recess for five minutes. Recess for five minutes.

63 (Whereupon a short recess was taken, after which the proceedings were resumed as follows:)

Mr. KLEIN. If the Board please, in connection with the indictment that Mr. Patterson wants to offer, that has no relationship to this proceeding at all. We have admitted that from the sales division, that there were shipments of finished trailers and parts for repair purposes, from Detroit to various branches.

And as far as the indictment is concerned, misbilling or erroneous billing has happened to all—to many outstanding companies, and we plead guilty to that because it would be cheaper to do that than go through a very involved and expensive litigation in which we would prove that we innocently made an error.

The company itself was not charged with knowing of this billing. It was an employee that was charged with it and because of his error, the company, under the statute, was made a party, but it has no bearing on this proceeding whatever.

Mr. PATTERSON. Well,——

Chairman MADDEN. Just a minute.

I agree with you perfectly, that as an indictment it has no bearing. But if there are under the indictment and the plea of guilty, admissions of shipments which might throw light upon the question of whether or not we have here interstate commerce, it seems to me that Mr. Pat-

64 terson should be entitled to show and that this witness should be entitled to state now what the facts are with reference to whether these shipments were, in fact made.

Mr. KLEIN. We don't deny that.

Chairman MADDEN. Well, now, what is the way of getting those facts into the evidence, without admitting the indictment?

Mr. KLEIN. They are in the evidence, if the Board please.

Our witness admits that we have shipped trailers and trailer repair parts to various branches in the United States. That is the fact.

Chairman MADDEN. Well, that really does not give us the volume of those shipments in any considerable detail.

Mr. KLEIN. This does not give it.

Mr. PATTERSON. Oh, yes, it does.

Chairman MADDEN. Well, now——

Mr. KLEIN. I think the witness will testify as to the amount of sales, if that is a factor, and he can give it here out of the statement, if that is of any importance.

Chairman MADDEN. Well, I think it is of importance.

Mr. KLEIN. All right.

Chairman MADDEN. Now, the question is, what is the best way to get it in?

Let me look at that thing and see how it is recited there, please.

65 (Mr. Klein hands documents to the chairman.)

Mr. PATTERSON. I think, Mr. Chairman, if you will refer to paragraph 5 of each count, it will describe in detail the various items that were shipped in that particular car.

Chairman MADDEN. Will you gentlemen come up here?

The REPORTER. Is this for the record, Mr. Chairman?

Chairman MADDEN. No.

(There was a discussion off the record.)

Chairman MADDEN. The Board would like to have you state, Mr. Patterson, what you think you would gain by putting in the indictment, as distinguished from getting an admission from the company of the actual facts of interstate shipments which are recited in the indictment, and that were, as you claim, admitted by the plea of guilty.

Mr. PATTERSON. Mr. Chairman, this indictment charges a violation of the Interstate Commerce Act. There are 25 separate counts, each count relating to a carload shipment. I attempted to abbreviate the various items covered in each particular shipment.

There were lamps, electric plugs, couplers, iron and steel. In each one of these counts a great number of small items of one kind or another, tractor and trailer couplers, paint, axles, springs, rims, in great quantities, are specifically recited in this indictment.

Now, the reason I maintain that the indictment
66 here is the best evidence of those 25 shipments, is the fact that this company has gone into the court in which this indictment was filed and plead guilty to it, which admits all—which admits every material allegation in the indictment.

Now, that being so, that is a legal admission that they

have shipped couplers, tractor-trailer units, trailer units, rims, frames, plugs, and all sorts of accessories and parts and items which I maintain really constitute a part of assembly.

The fact that in at least eighteen or twenty out of those twenty-five counts, one or more couplers, fifth wheels, connecting links, as this company calls them—were shipped, not only to customers, but in 15 of these 25 counts to itself.

Now, there is another thing I want to correct on this record. Mr. Klein here a few moments ago made the statement that the company was innocent of these things, but, in order to save money, it plead guilty.

The record in this case shows, the certified copy attached to that exhibit, may it please the Board, shows that this individual was dismissed and the sentence imposed against the company.

For that reason additionally they say, "We are willing to admit the facts in the indictment." Well, the best way to admit it, the ordinary, customary way to admit it, would be by the certified copy of this court's records.

What he may say now cannot change the record
67 of a court of competent jurisdiction.

Chairman MADDEN. Well, what he may say now, if it is a complete admission of those facts, certainly renders unnecessary the proof by any other means, either the record or otherwise.

Mr. PATTERSON. Well, Mr. Chairman——

Chairman MADDEN. Now, after a while you will be putting on your witnesses, I take it, and when you have a workman on the stand, if the respondent should desire on cross examination to question as to whether this workman had been found guilty of beating his wife or something else, you would be on your feet objecting that all of that is quite irrelevant to what we are doing here, and when you make such an objection you will be right and your objection will be sustained.

Mr. PATTERSON. Well, Mr. Chairman——

Chairman MADDEN. I think you have the same situation here. If these people were denying these things, well, then, of course, you would have the right to dig up any sort of an admission to the contrary which you could find that they had made in any other proceeding, but they are not denying it, as I understand it.

Now, if you want to put in the factual part of these statements, and ask the witness whether those statements are in fact correct, you may do so.

Mr. PATTERSON. I would like to have this certified copy of the docket entries, the indictment, and the court's

orders, marked as Complainant's Exhibit No. 1, for identification purposes.

(The document referred to was marked "Complainant's Exhibit No. 1" for identification.)

Mr. PATTERSON. And, for the purpose of the record, Mr. Chairman, I should like to offer the entire exhibit in evidence.

Chairman MADDEN. Yes.

Mr. KLEIN. Well, our objections have already been stated on the record, that it has no bearing.

Chairman MADDEN. Objection sustained.

Mr. PATTERSON. And we are reserving an exception to the complainant.

Q. (By Mr. PATTERSON.) Mr. Vosler, did you ever read the indictment that was filed against the Fruehauf Trailer Company in the United States District Court?

A. Not in its entirety.

Q. Well, did you read those portions of the indictment which refer to the merchandise that was shipped by the company, other than trailers?

Mr. KLEIN. If the court please, I take exception to the way in which Mr. Patterson is asking these questions, referring to the indictment which has been ruled out of evidence. I believe the proper way to question Mr. Vosler is to ask him

"Did you as a matter of fact ship certain parts,"

69 naming them "by rail from Detroit to various points outside the State?"

Reference to the indictment has no bearing on the fact of whether there were such shipments.

Chairman MADDEN. I think that is right.

Mr. PATTERSON. Note an exception.

Q. (By Mr. PATTERSON.) Mr. Vosler, did the company on August 8, 1934, ship to Baltimore, consigned to the Fruehauf Trailer Company, the following:

A carload shipment of tractor-trailers of an aggregate weight of 14,840 pounds, subject to the aforesaid minimum weight of 20,000 pounds, and certain other property in less than carload quantities, to-wit:

One box of automobile lamps, electric plugs, brake parts, n. o. i. b. n.—Do you know what that stands for, Mr. Klein?

Mr. KLEIN. No; I do not.

Q. (By Mr. PATTERSON, continuing). Automobile parts n. o. i. b. n., iron and steel, and other articles, classified the same or lower, of an aggregate weight of 3,425 pounds, and 4 tractor-trailer couplers of an aggregate weight of 1,060 pounds, loaded onto a car bearing the initials and number, M. C. 32844?

Mr. KLEIN. We admit that we shipped that. I will admit that for Mr. Vosler.

Mr. PATTERSON. All right.

Mr. KLEIN. We have got all those various items and
70 we admit we made those shipments.

Chairman MADDEN. Now, let us save time by getting these things in on your admission for the company, without stopping here to have them read.

Mr. KLEIN. Yes.

Mr. PATTERSON. Why not let us do this: Each of these descriptions, such as the one that I have just read, appears—I think Mr. Klein will agree—in the fifth paragraph of each count.

Mr. KLEIN. I assume that is correct.

Mr. PATTERSON. If we can stipulate that during some recess counsel for the Complainant and counsel for the Respondent will read into the record that portion of this——

Mr. CARMODY. Exhibit.

Mr. PATTERSON. Exhibit, complainant's exhibit no. 1, relating to the items that were shipped on the various cars, to the various respective places, we can save time.

Chairman MADDEN. Is that agreeable?

Mr. KLEIN. Yes, but it will simply unnecessarily clutter up the record. We made a lot more shipments than that. I think that the better way to get the facts would be to ask this witness what his shipments were out of the state, if he knows, in a general way, each year.

Mr. PATTERSON. I would rather have specific shipments, than generalities, if the Board please.

71 Mr. KLEIN. Well, that will give you the complete picture—we will give you the various parts shipped out, and the total amount of sales, out of the state; we can get the facts at noon, how many parts were shipped out of the state, and how many completed trailers were shipped out of the state; and that will give you the complete picture in just one little paragraph, instead of twenty-five pages of repetition on $40 or $50 worth of merchandise.

Mr. PATTERSON. Well, it would not be that much.

Chairman MADDEN. Let us withhold this entire matter until we see what is produced after the noon recess.

Mr. KLEIN. We are perfectly willing to give all of the facts that show our operations. We think that that should be brought out.

Mr. PATTERSON. I want to make the statement to the Board that the acquiescence of complainant in incorporating those portions of complainant's exhibit no. 1, is with the reservation that we except to the ruling of the Board, in not including the entirety of complainant's exhibit no. 1.

Chairman MADDEN. You may have your exception.

Q. (By Mr. PATTERSON.) Now, Mr. Vogler, does the Fruehauf Trailer Company maintain a branch at Richmond, Virginia?

A. No, sir.

Q. Does it have a distributor at Richmond, Virginia?

A. Yes, sir.

72 Q. Does the company have any interest in that corporation?

A. None whatever.

Q. Does the Fruehauf Trailer Company finance any of the sales, or buy any of the paper covering sales by the distributor at Richmond, Virginia?

A. No, sir.

Q. Are you quite certain about that?

A. Yes, sir.

Q. What is the name of the Fruehauf Trailer Company distributor at Richmond, Virginia?

A. I think it is Carter Brothers Company.

Q. Carter Brothers Company?

A. I think so.

Q. You sell them a lot of trailers, do you not?

A. Quite a few.

Q. How many do you sell them—how many have you sold them in the last year?

A. I do not know.

Q. Does the Fruehauf Trailer Company have any employees working down there at Carter Brothers?

A. No, sir.

Q. You have no employees in Richmond, Virginia, at all?

A. No, sir.

Q. Do Carter Brothers Company do their own selling?

A. Yes, sir.

73 Q. Is it not a fact that many trailer parts are sent to Carter Brothers Company at Richmond, Virginia, for assembly?

A. Yes, sir.

Q. It is a fact, is it not, that on some occasions completely assembled trailers here have been knocked down and sent to Carter Brothers Company?

A. I expect that has happened.

Q. Do most of the trailers which they buy, go to them in knocked down form, or in completely assembled form?

A. I really do not know.

Q. What was the amount of business that the Fruehauf Trailer Company did last year?

A. I do not have that figure in mind.

Mr. KEAY. In sales?

Mr. PATTERSON. Yes.

A. I do not have that figure in mind.

Q. (By Mr. PATTERSON.) Could you tell us what its sales were for the year 1934?

A. I do not have the figure in mind, Mr. Patterson.

Q. Could you produce that information this afternoon?

A. I think so.

Q. After the noon recess?

A. I think so.

Q. Would it be possible for you to produce, also, Mr. Vosler, your sales figures for the first ten months of this year?

74 A. I am not sure whether they are available or not, although they may be.

Q. Well, will you obtain such sales figures as you can, for the year 1935?

A. Yes, sir.

Mr. PATTERSON. Mr. Reporter, will you mark this document complainant's exhibit no. 2 for identification.

(The document referred to was marked "Complainant's Exhibit No. 2" for identification.)

By Mr. PATTERSON:

Q. Mr. Vosler, I hand you what has been marked for purposes of identification as "Complainant's Exhibit No. 2", which appears to be a catalogue called Good Business.

A. Yes.

Q. Was that published by the Fruehauf Trailer Company?

A. Yes, sir.

Q. And I believe that many of these photographs which you have introduced were cut out of one of these catalogues——

A. Yes.

Q. —— is that right?

A. Yes, sir.

Q. Now, referring to page 3—or rather, to page 2, of complainant's exhibit no. 2 for identification, r. Vosler, I direct your attention to the photograph in the upper left-hand corner of the page, which appears to be a tractor and trailer of the A. & P. Grocery Company. Is that right?

75

A. Well, it does not say that. It says that it hauled A. & P. merchandise. It may not have belonged to the A. & P. Grocery Company.

Q. Well, does not the trailer shown in that photograph bear the initials A. & P.?

A. That is true of all of the trailers that haulers use for hauling A. & P. merchandise.

Q. I see. So that this trailer might have been built for a customer other than the A. & P. Grocery Company?

A. Yes, sir.

Q. In other words, it might have been for an individual who hauled A. & P. grocery products from one State to another?

A. It might have been.

Q. Yes. Now, referring you further, Mr. Vosler, to page 4 of complainant's exhibit no. 2, for identification, in the upper right-hand corner there appears to be a tractor and two trailers, and underneath the photograph the words "Fruehaufs Hauling 40 ton Loads of Pipe for Iraq Petroleum Company on the Syrian Desert."

That was a tractor made by your company, was it not?

A. We do not make tractors.

Q. I mean, trailers.

A. Yes, sir.

Q. Is that right?

76 A. Yes, sir.

Q. Those two trailers were made by your company?

A. That is right.

Q. Especially designed for the work of the Iraq Petroleum Company.

A. Perhaps so; I do not know.

Q. Now, at the bottom of page 4 of complainant's exhibit no. 2 for identification, is another photograph labeled "A Montreal Engineering Firm, Shawinigan Engineering Company, asked Fruehauf for the best method of transporting 100-ton transformers. This special 'Carryall' was designed, and it solved the problem."

Was the trailer appearing in that photograph made by the Fruehauf Trailer Company?

A. Yes, sir.

Q. And that trailer was made specifically for this Montreal Engineering firm, was it not?

A. Probably so.

Q. Well, that is what it says here, is it not?

A. Yes, sir.

Q. And that is true, is it not?

A. I assume that is right.

Q. Yes. In other words, is it not a fact, Mr. Vosler, that in the conduct of the business of the Fruehauf Trailer Company many of the trailers which you build are made according to the specifications submitted by the customer?

77 A. That is true in some cases; not all, however, by any means.

Q. No; but is it not true in a great number of cases?

A. Well, I do not know what you would call a great number of cases.

Q. Well, what percentage of the trailers that you build, are built to specifications on a contract order from the customer?

A. A small percentage of them.

Q. Well, what would you say?

A. 15 or 20 percent.

Q. 15 or 20 percent?

A. Yes, sir.

Q. And you would not say that it was any more than that?

A. I would not think so.

Q. Now, referring to page 6 of this same complainant's exhibit no. 2 for identification, Mr. Vosler, I direct your attention to the following language:

The Fruehauf Trailer Engineer sees transportation from still another viewpoint. He is not limited or "hemmed in" by a standardized line of motor trucks, or tractor-trucks. He is free to design and engineer a trailer that will function perfectly in coordination with the power unit of your selection—and you are free to choose from all the power units that truck engineering genius has produced.

Fruehauf put that in here, did it not?

78 A. Yes, sir.

Q. And you advertise to the trade that you build trailers to conform to the tractor unit of the customer; is that not right?

A. That is right.

Q. Now, referring further to pages 20, 21, 22, 23, 24, and 25, of this document, complainant's exhibit no. 2 for identification, I will ask you to look at the photographs of trailers on those pages, and ask you whether Fruehauf built those trailers for the various customers whose names appear on the trailers.

A. They either built them in whole or in part, I would say. I cannot tell you who may have built the bodies on those. They may have been just a special chassis that was shipped to New York, or any other place, and had a body built on it there by the customers.

Q. Well, in other words, by putting them into your catalogue, you claim some credit for manufacturing one part, or another, of the trailers?

A. Yes.

Q. Is that right?

A. Right.

Q. Now, referring to pages 26 and 27 of complainant's exhibit 2 for identification, there appear to be six photo-

graphs of Fruehauf factory branches. On the lower part of page 26 there is a Fruehauf factory branch in
79 Chicago, Illinois. Is that right?

A. Yes, sir.

Q. And on the side of the building I think the photograph shows that it is a factory branch.

A. That is correct.

Q. Do you assemble any trailers down in Chicago?

A. No, sir.

Q. Did you ever?

A. Not to my knowledge.

Q. I see. Now, the photographs on page 27—is the one at the top of the page a true representation of the Fruehauf factory branch in Philadelphia?

A. I think so.

Q. This branch provides complete sales and service facilities for Philadelphia users?

A. Right.

Q. Sales and service?

A. And service; yes, sir; service.

Q. You make a sharp line of differentiation between service and assembly, do you?

A. Yes, sir; I do.

Q. Yes. Now, let me ask you this question, Mr. Vosler: Does it not very frequently happen that somebody buys a tractor—or buys a trailer at one of these branches and they want another kind of brake on the trailer than what it has on it?

80 A. It is possible that a unit may be changed over.

Q. Yes.

A. (Continuing.) A tire may be changed, or something of that sort might take place.

Q. Well, now, to answer my question, Mr. Vosler——

A. But I do not think that is an assembly proposition.

Q. Well, now, just a moment. Is it not true that you know of instances where you had a trailer at any one of these branches, and when the customer bought that trailer he wanted a different type of brake on it than what it had on it, and your mechanic at the branch converted the brake into that which the customer wanted?

A. Yes, sir.

Q. That is right, is it not?

A. That has happened.

Q. Is it not also true that very frequently that, as to a trailer which is at the branch, equipped with tires, the customer wants a different set of tires, and your mechanic changes the tires over for him?

A. Yes, sir.

Q. On a new trailer?
A. Yes, sir.
Q. Is it not also true that at a factory branch very frequently the undercarriage of a trailer is changed to conform to the requirements of a customer?
81 A. No, sir; I do not think so.
Q. Is it not a fact that most of the springs are changed?
A. Not that I know of.
Q. You do not know of any instances of that kind?
A. No, sir.
Q. But it is more or less of a common practice, is it not, Mr. Vogler, for the employees of Fruehauf at the respective factory branches, to change either the type of brake, the tires, or some other part of the trailer before delivery?
A. Some parts are changed; yes, sir.
Mr. PATTERSON. May I see that for just a moment again, please.
The WITNESS. Certainly.

By Mr. PATTERSON:

Q. Now, the second photograph on page 27 of complainant's exhibit no. 2 for identification, shows the Fruehauf branch in New York; is that right?
A. Yes, sir.
Q. And the third paragraph on page 27 of the same exhibit, it shows the Fruehauf factory branch—although it does not show it in the name of the building—in Kansas City.
A. That is correct.
Q. Now, the fourth photograph on page 27 of the same exhibit bears the name of Newcomer-Fruehauf.
A. Yes, sir.
82 Q. I understand that you have now discontinued doing business with them.
A. Yes, sir.
Q. And the last photograph on page 27 shows the Kentucky branch maintained by Fruehauf; is that correct?
A. We do not maintain any branch in Kentucky, Mr. Patterson.
Q. Is this just a salesroom?
A. That is a salesroom, operated by a distributor.
Q. Operated by a distributor?
A. Yes, sir.
Mr. PATTERSON. I offer complainant's exhibit no. 2 in evidence, if the Board please.
Chairman MADDEN. Is there any objection?
Mr. KIMIN. If the Board please, I do not see the materiality of putting this whole big volume into evidence. We admit the statements in here, and if photographs will be

of any help to the Board, we have no objection to them; but why should we go to the expense of building up a great big record here? I do not see the materiality of it.

Mr. CARMODY. How expensive would it be to have six or eight of these pamphlets attached to the record?

Mr. KLEIN. Do you mean, in printing the record?

Mr. CARMODY. No, not reprinted at all, but just attached to the record.

Mr. KLEIN. Well, just attaching them is one thing,
83 but if this matter goes into the courts, we will have to print 40 or 50 of them for the Circuit Court of Appeals, and a like number for the Supreme Court.

Mr. CARMODY. How many of them would you say there are available now?

Mr. KLEIN. Well——

Mr. CARMODY. How old is that booklet?

Q. (By Mr. PATTERSON.) When was that published, Mr. Vosler?

A. Oh, I imagine within the last two years, or I could not say definitely.

Chairman MADDEN. Do you still have some?

The WITNESS. I am sure that there are some; yes, sir.

Chairman MADDEN. I would not see any particular expense attached to getting 40 or 50 of them out of stock, if there are that many of them available, by the company; I do not see any difficulty about that.

We will admit the document.

(The document previously marked "Complainant's Exhibit No. 2" for identification, was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, is it not a fact that this catalogue, Good Business, was circulated throughout the country to the trade?

A. I do not know just exactly what circulation it had, Mr. Patterson.

84 Q. Well, is it not a fact that this catalog was sent to your various factory branches throughout the country?

A. Yes, sir.

Q. Do you know how many copies of it were printed?

A. No, sir; I do not.

Q. And do you know whether this same catalogue is being distributed to the trade now, or to your branches?

A. No, sir; I do not know.

Q. You do not know that?

A. No, sir.

Mr. PATTERSON. I will ask the reporter to mark this document complainant's exhibit no. 8 for identification.

(The document referred to was marked "Complainant's Exhibit No. 3" for identification.)

Q. (By Mr. PATTERSON.) Mr. Vosler, I hand you what has been marked for purposes of identification, complainant's exhibit no. 3, and ask you what that is.

A. It appears to be a compilation of various literature that the company has had prepared at different times, with some price sheets.

Q. Is that not what is commonly known as the Fruehauf Salesmen's Manual?

A. No, sir; it is not.

Q. It is just a compilation of material prepared by the Fruehauf Company?

85 A. Yes, sir.

Q. It is Fruehauf material.

A. I would say that it appears to be.

Q. Now, I would like to direct your attention, Mr. Vosler, to the large page in the front of the book, which is called here, "Ten-Point Trailer Program." Fruehauf put that out, did it not?

A. Yes, sir.

Q. I would like to direct your attention to the column headed "Before the Sale" to item no. 2, headed "Personal Assistance"—I will just save you the trouble of holding that, Mr. Vosler.

A. All right.

Q. (Continuing.) Reading as follows:

Trailers are a specialized product. Their sale often requires expert knowledge—the services of an experienced trailer man. This personal assistance is yours for the asking—from any one of the Fruehauf representatives in every major city.

What did the Fruehauf Company mean by that?

A. We expect our salesmen to be capable of intelligently surveying the customer's haulage problem, and offering him something from our line of trailers that he can use to advantage.

Q. In other words, so that proper specifications could be prepared by an experienced trailer man on the ground,

86 for submission to your engineering department, for the construction of a trailer to meet the requirements of the particular customer.

A. Not necessarily all that; no sir.

Q. It might include that; might it not?

A. It might include it; yes, sir.

Q. (By Mr. KLEIN.) What else were you going to add, Mr. Vosler, when you were interrupted?

Mr. PATTERSON. Oh, excuse me. Were you going to add something there?

A. I was just going to say, it does not necessarily include all that. The major part of the trailers are not designed by the man in the field.

Q. (By Mr. PATTERSON.) No——

A. (Continuing.) He knows whether it ought to have a big tire, or a little tire, or whether it ought to have 5-ton capacity or 10-ton capacity. He knows what the length, and the width of the body ought to be. That is as far as——

Q. Yes, but such information as that your representative in the field often forwards to your engineering department, and they design a trailer in accordance with those general suggestions; that is correct, is it not?

A. As a general thing, the trailer is available out of our standard lines, you see.

Q. Yes; and sometimes it is not?

A. Sometimes it is not.

87 Q. Yes.

A. That is true.

Q. Now, over on the other side of this Fruehauf Ten-Point Dealer Program, under the heading "After the Sale", I call your attention to paragraph 8, headed "Protect your Tractor" and reading as follows:

Fruehaufs are not only engineered to the job—they are designed and built to fit your tractor truck. Ease of rolling, distribution of load, capacity of tractor frame and motor—all are taken into consideration to make sure that the tractor and trailer are correctly matched to work together with top efficiency.

Just what do you mean by that?

A. That is a general statement that applies to all trailers. Anything that we make has to be made so that it is going to do an efficient job. The distribution of any trailer is settled by proper engineering. It is not varied, however, to each truck with which it may be used.

Q. Well, what do you mean by this statement: "They are designed and built to fit your tractor-truck"?

A. That is, as I say, a general statement. All trailers are made to fit certain tractor-trucks. We have one line that fits light tractor-trucks.

Q. Yes.

A. (Continuing.) And we have another line that

88 fits medium-duty tractor-trucks.

Q. I see.

A. And we have other lines that fit the heavy duty tractor-trucks.

Q. Yes. Now, then, under the heading "After the Sale", I call your attention to item no. 9, headed "National Service" reading as follows:

When you sell a Fruehauf assure your customer that wherever he may travel, Fruehauf service will be available nearby. Tell him there is a Fruehauf Service Station in every major city, with an experienced man in charge who is anxious to help him keep his trailer on the road.

Now, just what did you mean by that statement?

A. Why, we mean just what we say. We try to give service, just the same as the automobil men try to give service, or the tire men try to give service. I would not buy a car that did not offer me some service.

Q. And the Fruehauf Trailer Company maintains these service men in all the of the principal cities, is that right?

A. Where we have branches.

Q. Yes.

A. We generally do.

Q. Yes. And you tell your trade that that service is a part of what they are buying when they buy a Fruehauf trailer, do you not?

89 A. We make it available to them.

Mr. PATTERSON. Yes. I offer in evidence, if the Board please, the Fruehauf Ten Point Dealer Program. I do not see any necessity for putting in the rest of it.

Mr. KLEIN. No. I would rather keep the record down, if we possibly can.

This is your exhibit 2, is it?

Mr. PATTERSON. 3.

Mr. KLEIN. Or 3, rather.

Chairman MADDEN. It may be admitted.

(The document previously marked "Complainant's Exhibit No. 3" for identification, was received in evidence, witness Vosler.)

Q. (By Mr. PATTERSON.) Might I inquire, Mr. Vosler, to whom this Fruehauf Ten Point Dealer Program was distributed?

A. I really could not tell you.

Q. Is there anybody connected with your company who could tell the Board that?

A. Oh, I expect so. It looks to me like it is a copy of an advertisement that appeared somewhere; but I do not know.

Q. Well, you will notice on the back of the exhibit there appears to be a letter signed by Mr. G. W. Chamberlin.

A. Yes, sir.

Q. Do you recognize that as being Mr. Chamberlin's signature?

90 A. No, sir; I do not. It is addressed to a truck dealer, so I assume that is who it was distributed to.

Mr. PATTERSON. All right.

Q. (By Mr. KLEIN.) Mr. Chamberlin is your sales manager, is he not, Mr. Vosler?

A. Yes, sir.

Mr. PATTERSON. I will ask the reporter to mark these next three documents complainant's exhibits 4, 5, and 6 respectively for identification.

(The documents referred to were marked respectively "Complainant's Exhibits Nos. 4, 5, and 6", for identification.)

Mr. PATTERSON. If the Board please, I desire to offer in evidence at this time, if I have not already done so, complainant's exhibit no. 3.

Mr. CARMODY. You just did that.

Chairman MADDEN. Yes; that has been admitted.

Mr. PATTERSON. Very good.

Q. (By Mr. PATTERSON.) I hand you, Mr. Vosler, what has been marked for purposes of identification as complainant's exhibit no. 4, and ask you if that pamphlet is published by the Fruehauf Trailer Company?

A. Yes, sir.

Q. And that deals with the construction of trailers, does it not primarily for the transportation of livestock? Is that correct?

91 A. Yes, sir.

Q. The trailers pictured here were built by Freuhauf, I take it.

A. I would not be sure that the bodies were built by Fruehauf. The chassis were.

Q. The chassis were?

A. Yes, sir.

Q. And you would say that the chassis, if not both the body and the chassis, of Wrightsman No. 4, Virden, Illinois, was built by Fruehauf?

A. Yes, sir.

Mr. PATTERSON. I offer complainant's exhibit no. 4 in evidence.

Chairman MADDEN. It may be admitted.

(The document previously marked "Complainant's Exhibit No. 4" for identification, was received in evidence, Witness Vosler.)

Mr. CARMODY. May I see that, please?

Q. (By Mr. PATTERSON.) Mr. Vosler, I hand you——

Mr. KLEIN. Just a moment, please. I wonder if I may see some of these exhibits that are being offered—if you do not mind.

Chairman MADDEN. Certainly.

Mr. CARMODY. Here.

Mr. KLEIN. No; after you, sir.

Mr. CARMODY. That is all right.

92 Mr. KLEIN. No, No; after you.

Mr. CARMODY. All right. Just a moment.

Q. (By Mr. PATTERSON.) Mr. Vosler——

Chairman MADDEN. Wait just a moment, will you please, until counsel has had an opportunity to see the exhibit.

Mr. PATTERSON. Pardon me.

Mr. CARMODY. I take it from this exhibit that at least some of the chassis on the live stock trailers are built by Fruehauf.

The WITNESS. Yes, sir.

Mr. CARMODY. The shrinkage, skinning, and so forth and so on, are prevented by the type of chassis that you put on—or the type of body that you put on the chassis; is that it?

The WITNESS. Well, I do not know, Mr. Carmody. I am not familiar with the hauling of live stock enough to just say about that.

Mr. CARMODY. I see. Of course, we do know that less shrinkage and less skinning does occur when the body is adapted to the character of the livestock; that is, as to whether it is for sheep, or for cattle. But I did not mean to interrupt. Go on.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler——

Chairman MADDEN. One moment. Let us see what the situation is about the exhibit.

Mr. KLEIN. No objection.

93 Chairman MADDEN. Very well; exhibit 4 is admitted.

Q. (By Mr. PATTERSON.) Mr. Vosler, referring to complainant's exhibit no. 4. Did Fruehauf ever distribute that to the trade generally?

A. Why, probably in certain sections of the country; yes, sir.

Q. Where live stock trailers might be needed.

A. Yes, sir.

Q. Or would—or where there would be a market for them?

A. Yes.

Mr. PATTERSON. I ask the reporter to mark this document complainant's exhibit no. 5 for identification—pardon me; this has already been marked.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, I hand you what has been marked for purposes of identification "Complainant's Exhibit No. 5", and I ask you whether that is a pamphlet also published by the Fruehauf Company?

A. Yes, sir.

Q. And the trailer that is there photographed—or a photograph of which appears there: Either the chassis or the entire trailer was built by the Fruehauf Company?

A. Yes, sir.

Q. The name Essex Wire Corporation, Detroit, Logansport, Indiana, Chicago appearing on the side of the trailer in the photograph.

A. Yes.

94 Q. Was this circular distributed to the trade generally?

A. I do not know what distribution these circulars may have had, Mr. Patterson.

Q. Well, they were undoubtedly sent to your various branches, were they not?

A. I imagine so.

Mr. PATTERSON. I offer complainant's exhibit no. 5 in evidence.

I will ask the reported to mark this document as complainant's exhibit no. 6 for identification——

Chairman MADDEN. Just a moment, Mr. Patterson. Let us get these exhibits settled, one at a time.

Mr. PATTERSON. Pardon me. I thought Mr. Klein had no objection to these exhibits. I had shown them to him.

Mr. KLEIN. I just wanted to identify them, that was all. All right.

Chairman MADDEN. The exhibit is admitted.

(The document previously marked "Complainant's Exhibit No. 5" for identification, was received in evidence, Witness Vosler.)

Mr. PATTERSON. I ask the reporter to mark this next document complainant's exhibit no. 6 for identification—oh, that has already been marked.

Q. (By Mr. Patterson.) Mr. Vosler, I hand you what has been marked for purposes of identification "Com-
95 plainant's Exhibit No. 6", and I will ask you if that is published by the Fruehauf Company?

A. Yes, sir.

Q. And that relates particularly to the construction of springs and radius rods that Fruehauf has adopted?

A. That is right.

Q. I notice on the back of this folder, the following appears:

Oldest and largest manufacturers of trailers—Fruehauf Trailer Company—sales and service in all principal cities—Detroit, Michigan; Fruehauf Trailer Company of Canada, Ltd., Toronto, Canada.

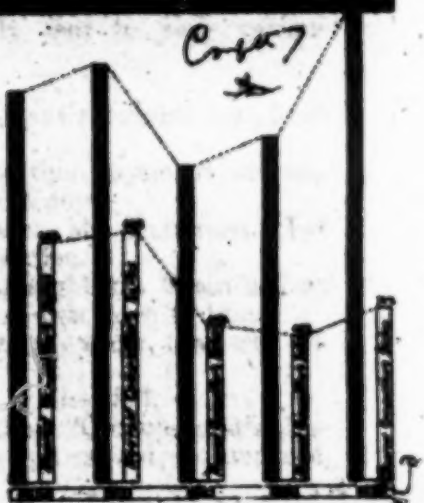
A. Yes.

Q. By the way, is the tractor on the back of that—or rather is the trailer pictured on the back of that, one of Fruehauf construction?

A. Some part of it was.

Mr. PATTERSON. I offer complainant's exhibit no. 6 in evidence.

IT *pays* TO SERVE!



Board Exhibit 7

Mr. KLEIN. No objection.

Chairman MADDEN. The exhibit is admitted.

Mr. KLEIN. Just a moment please. That is with reference to what?

Mr. PATTERSON. Spring and radius rod construction.

Mr. KLEIN. All right.

96 (The document previously marked "Complainant's Exhibit No. 6", for identification, was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) I take it, Mr. Vosler, that that exhibit was distributed to your various branches throughout the country?

A. I expect so.

Mr. PATTERSON. I will ask the reporter to mark these next two documents "Complainant's Exhibits Nos. 7 and 8", respectively, for purposes of identification.

(The documents referred to were marked, respectively, "Complainant's Exhibits Nos. 7 and 8", for identification.)

Q. (By Mr. PATTERSON.) Mr. Vosler, I hand you what has been marked for purposes of identification as "Complainant's Exhibit No. 7", which purports to be a paid advertisement by the Fruehauf Trailer Company on the back cover of the issue of the Michigan Trucking News for May 1935. Is that one of your ads?

A. Yes, sir.

Q. And in that advertisement you refer to a registered United States Patent Office trade-mark, "Engineered Transportation", is that right?

A. Yes, sir.

Q. And you also point out the comparative net sales of the Fruehauf Company to its nearest competitor for the

97 years 1930, 1931, 1932, 1933, and 1934, inclusive; is that right?

A. Yes, sir.

Mr. PATTERSON. I offer complainant's exhibit no. 7 in evidence, if the Board please.

Chairman MADDEN. What does it show as to the comparison to which you just referred?

Mr. PATTERSON. 1930, Fruehauf Company net sales; nearest competitor's sales 62 per cent.

1931, Fruehauf Company's net sales; nearest competitor's sales, 60 per cent.

1932, Fruehauf Company's net sales; nearest competitor's sales, 49 per cent.

1933, Fruehauf Company's net sales; nearest competitor's sales, 42 per cent.

1934, Fruehauf Company's net sales; nearest competitor's sales, 37 per cent.

There is also the reference made at the bottom of the page, that they maintain sales and service in all of the principal cities.

Chairman MADDEN. Show it to counsel.

Mr. PATTERSON. Counsel has seen all of them.

Mr. KLEIN. Yes.

Chairman MADDEN. Would you say, Mr. Vosler, that the Fruehauf Company now occupies about the same relative position in the trade as it did, say, in 1934?

98 The WITNESS. I do not know anything to the contrary, Mr. Chairman.

Mr. KLEIN. By percentage of sales, is meant, I assume, that the Fruehauf Company's sales are set up in one bracket——

Mr. PATTERSON. Yes.

Mr. KLEIN. And then the sales of its nearest customer, dollar sales, are set beside that.

Mr. PATTERSON. Yes.

Chairman MADDEN. Its nearest competitor's sales.

The WITNESS. Competitor.

Mr. PATTERSON. Its nearest competitor's sales.

Mr. KLEIN. Yes.

Mr. PATTERSON. Yes. I offer complainant's exhibit no. 7 in evidence.

Chairman MADDEN. The exhibit is admitted.

(The document was previously marked "Complainant's Exhibit No. 7" for identification was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) I now hand you, Mr. Vosler, what has been marked for purposes of identification "Complainant's Exhibit No. 8", which purports to be a paid advertisement on the back cover of the August 1935 issue of the Michigan Trucking News; and ask you whether or not that advertisement was inserted by the Fruehauf Trailer Company?

A. Yes, sir.

99 Q. And that advertisement deals with "The vital connecting link"—meaning by that, the fifth wheel——

A. Yes, sir.

Q. Is that right?

A. Right.

Mr. PATTERSON. I offer complainant's exhibit no. 8 in evidence, if the Board please.

Chairman MADDEN. Has counsel seen it?

Mr. KLEIN. I would like to see it.

(The exhibit was examined by counsel for the respondent.)

Mr. KLEIN. I have no objection to that.

Chairman MADDEN. The exhibit is admitted.

"Engineered Transportation."

IN THE FIFTH WHEEL

Board Exhibit 8

(The document previously marked "Complainant's Exhibit No. 8" for identification was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, do you have a general knowledge of the various sources from which the Fruehauf Trailer Company obtains its raw materials?

A. Yes, sir.

Q. What is the fact as to where it obtains its sheet steel?

A. Part of it comes from the Great Lakes, here in Michigan; and part of it comes from mills in Ohio.

Q. Is it a fact that you get considerable sheet steel from the American Rolling Mills Company at Middleton, Ohio?

A. Yes, sir.

100 Q. How much sheet steel have you bought from them in the last six months?

A. I could not tell you.

Q. Do you have anybody in your employ who could tell us the relative amounts?

A. Oh, I expect that it could be determined, yes, sir.

Q. Could you obtain that information for us?

A. I think so.

Q. Is it a fact, Mr. Vosler, that the Fruehauf Trailer Company buys considerable sheet iron, or sheet steel, from the Weirton Steel Company, in West Virginia?

A. I do not know about the Weirton Company especially.

Q. You do not know about that?

A. No, sir.

Q. Is there any steel bought from the Inland Steel Company, in Chicago, Illinois?

A. Yes, sir.

Q. Considerable, is there not?

A. I could not tell you what the percentage is, Mr. Patterson. There has been some purchased there.

Q. Now, what is the fact as to whether or not the Fruehauf Trailer Company buys side rails from the Youngstown Steel Car Company at Niles, Ohio?

A. That is true.

101 Q. How many side rails has the company bought since January the 1st of this year, from that company?

A. I could not tell you.

Q. Do you recall several shipments aggregating about five thousand side rails, from this one concern?

A. No, sir, I could not tell you about that, Mr. Patterson.

Q. You would not say that you did not buy that many, would you?

A. No, sir.

Mr. KLEIN. If the Board please, may I suggest, in order to save a considerable amount of time, and expense, in build-

ing up a tremendously large record: I think that Mr. Vosler has testified as to the major materials which are bought by the company, necessary in its operations.

Chairman MADDEN. You mean, in his statement?

Mr. KLEIN. Yes, and we say that over 50 percent is obtained from out of the State. He has described where it is brought into the State; there are several different places from which the material comes. I think he has described the situation generally.

If we give you an idea of the total amount of purchases, and the percentage brought in from out of the State, I think that ought to give you a very fair idea, without repeating each individual item, and building up a very large record by repetition.

Mr. PATTERSON. My principal object by this exam-
102 ination, may it please the Board, was to establish the various sources from which the raw materials are purchased by this company. That would have a very important influence upon the question of interference or restraint that the establishment of unfair labor practices might have upon interstate commerce.

Chairman MADDEN. I observed, as Mr. Vosler's statement was being read here, that the statement was not at all specific about steel. It is specific about lumber, but——

Mr. EDWIN S. SMITH. Do you think, Mr. Patterson, that the names of these particular companies are material, and necessary to be brought out?

Mr. PATTERSON. No; not particularly. What I am interested in primarily are the cities and States from which the various raw materials are purchased.

Mr. CARMODY. There seem to be only a limited number of mills.

Mr. PATTERSON. Yes.

Mr. CARMODY. And I think we would get through with it much quicker if we went right ahead with it, rather than sitting around here wondering how we can save time.

I think we can save time by going right ahead.

Chairman MADDEN. Yes.

Q. (By Mr. PATTERSON.) Is it not a fact, Mr. Vosler, that the Fruehauf Company buys its axles from the Axle Forging Company, at Alliance, Ohio?

103 A. Yes, sir.

Q. Great quantities of axles are bought there; is that correct?

A. Yes, sir.

Mr. CARMODY. Do you mean finished axles?

The WITNESS. No, sir.

Mr. CARMODY. Just forgings?

The WITNESS. Rough forgings.
Mr. CARMODY. Forgings.
Q. (By Mr. PATTERSON.) Forgings?
A. Yes.
Q. Is it a fact, Mr. Vosler, that you buy great quantities of springs from the Merrymont Manufacturing Company at Chicago?
A. We buy some springs from there, but the bulk of them come from the Detroit Steel Products Company, at Detroit.
Q. But you do buy some from Chicago, do you not?
A. Yes, sir.
Q. The bulk of them, you say, though, comes from the Detroit Steel Products Company?
A. Yes, sir.
Mr. CARMODY. May I interrupt with a question just at this point?
Mr. PATTERSON. Certainly.
Mr. CARMODY. Do you buy the same character of spring from both of them, or does one manufacture a spring
104 of a certain kind, or does it specialize in a certain type of spring, which you buy from them?
The WITNESS. As far as I know, they are both the same, Mr. Carmody.
Mr. CARMODY. They both make the same?
The WITNESS. Yes.
Mr. CARMODY. They duplicate them in their manufacture?
The WITNESS. As far as I know.
Mr. CARMODY. But you buy, sometimes from one and sometimes from the other?
The WITNESS. Yes.
Mr. CARMODY. One of them does not make a spring that the other does not make, that you want?
The WITNESS. No, sir.
Mr. CARMODY. All right.
Q. (By Mr. PATTERSON.) Is it a fact, Mr. Vosler, that you buy large quantities of wheels from a wheel building concern in Dayton, Ohio?
A. Yes, sir.
Q. Is it a fact that you buy your rims from the Firestone Steel Products Company in Akron, Ohio?
A. A large proportion of them.
Q. What—where else do you buy rims?
A. I think they all come from Ohio.
Q. All of the rims come from Ohio?
105 A. Yes, sir.
Q. Is it a fact that you buy your brake equipment from the Bendix Products Company, at South Bend, Indiana?

A. Part of it.
Q. Where else do you buy it?
A. We make most of it.
Q. You make most of your brake equipment yourself?
A. Yes, sir.
Q. From what?
A. We make it from rough forgings, castings, and parts of that sort.
Q. Do you also buy some brake material from the Mid land Steel Products Company, at Cleveland?
A. Yes, sir.
Q. And how about Westinghouse brake equipment?
A. We use some Westinghouse brake equipment also, yes, sir.
Q. Is it a fact that you buy quantities of malleable castings from the Maumee Steel Castings Company, at Toledo, Ohio?
A. Yes, sir.
Mr. CARMODY. Where does your Westinghouse brake material come from?
Q. (By Mr. PATTERSON.) Do you know where that comes from?
A. I am not sure whether they are still manufacturing——
Mr. CARMODY. At Pittsburgh?
The WITNESS. I think they have moved to South Bend.
106 Mr. CARMODY. No.
The WITNESS. I think so.
Mr. CARMODY. But, at any event, it is not in Michigan.
The WITNESS. No.
Mr. CARMODY. All right.
Q. (By Mr. PATTERSON.) Where does the Fruehauf Company buy its screws, Mr. Vosler?
A. I do not know.
Q. Would it refresh your recollection if I were to mention to you the Rockford Screw Company at Rockford, Illinois?
A. We do some business with the Rockford Screw Company; yes, sir.
Q. Where does most of your lumber come from?
A. Most of our lumber comes from the southern States.
Q. Kentucky, principally?
A. I do not know what State it comes from principally, Mr. Patterson.
Q. But most of it comes from the southern States, does it, Mr. Vosler?
A. Yes, sir.

Q. About how much lumber does your company use per year?

A. I do not know that.

Q. Could you ascertain that for us and have some figures here by this afternoon?

A. I think so.

107 Q. Is it a fact that the company buys most of its lights from the Columbus Metal Products Company of Columbus, Ohio?

A. We buy some lights there, but I do not know just what proportion of them.

Q. Well, do you buy any lights from any other concern?

A. I really could not answer that question.

Mr. EDWIN S. SMITH. Mr. Vosler, I think it would be very interesting, as to these different items which Mr. Patterson has enumerated, if the Board could know the percentage of each that the company has bought within the last fiscal period for which you have such figures—that is, the last year, say, from outside the State and inside the State; what proportion came from outside of the State, and what proportion from inside of the State.

Could that information be obtained rather readily?

The WITNESS. Well,——

Mr. EDWIN S. SMITH. Or would that be a difficult matter?

The WITNESS. I think that would be a rather difficult thing to take each one of those items and separate it that way.

Mr. CARMODY. I think it would. You probably do not have that information anywhere?

The WITNESS. No; we would not.

Mr. EDWIN S. SMITH. Well, you have indicated a figure of 50 percent.

108 Mr. CARMODY. Yes.

Mr. EDWIN S. SMITH. Which I assume was a cumulation of separate figures, although I do not know just how that 50 percent was arrived at.

The WITNESS. Well, that is just an accumulation that we made up by checking the accounts upon the records. Of course, where you know where a vendor is located inside the State or outside the State, you can get that quite readily.

Mr. PATTERSON. Upwards of 50 percent.

Mr. EDWIN S. SMITH. That is 50 percent by value, is it not? I mean, that is a dollars and cents figure.

The WITNESS. Yes.

Mr. EDWIN S. SMITH. And not by physical weight, or anything of that sort.

The WITNESS. No.

Chairman MADDEN. When you stated, when you were

speaking I believe with reference to sheet steel, that you got some of it from the Great Lakes in Michigan, what did you mean by that statement?

The WITNESS. Well, I mean that they are one of our suppliers of sheet steel. We buy from the Great Lakes, among other companies.

Chairman MADDEN. That is a company?

The WITNESS. Yes, sir.

Chairman MADDEN. Where is it located?

109 The WITNESS. I think it is located at Ecorse, Michigan.

Chairman MADDEN. Ecorse?

The WITNESS. Yes, sir.

Mr. CARMODY. They moved up here, to be near the automotive business, largely.

When did they come up here?

The WITNESS. I am not just sure where they are.

Mr. PATTERSON. Mr. Reporter, will you mark these documents with the next three complainant exhibit numbers, for identification.

Mr. CARMODY. I am not quite clear as to one point, in Mr. Smith's question.

Is it not true, Mr. Vosler, that for at least one or two of these major items you could with reasonable quickness go through the vouchers—or have a clerk do it—and determine the percentage of materials, either by volume or in dollars and cents, coming from out of the State, and the percentage of materials coming from within the State?

The WITNESS. No.

Mr. CARMODY. Take steel for instance.

The WITNESS. No.

Mr. CARMODY (continuing). Such as you buy from the American Rolling Mills down in Middleton, Ohio, or the Great Lakes, and the other vendors. You could buy it for them perhaps, could you not?

110 The WITNESS. Of course, that would be a more difficult thing than some others.

Mr. CARMODY. It would?

The WITNESS. Yes; because it has varied among several——

Mr. CARMODY. Vendors?

The WITNESS. Yes, sir.

Mr. CARMODY. Well, what about your lumber? Is there any proportion of your lumber that comes from Michigan?

The WITNESS. Not any sizable quantity, no, Mr. Carmody.

Mr. CARMODY. Practically all of your lumber, then, comes from outside of the State, does it?

The WITNESS. Yes, sir.

Mr. CARMODY. Michigan was once a great lumber State, but not any more.

Mr. KLEIN. Not now.

Mr. CARMODY. No.

Chairman MADDEN. What about your tires; do they all come from other States?

The WITNESS. We have suppliers—we have one supplier here in Detroit, the United States Tire & Rubber Company?

Chairman MADDEN. They do not manufacture here, do they?

The WITNESS. Yes.

Mr. CARMODY. Oh, yes; at the old Morgan & Wright plant?

The WITNESS. Yes.

Mr. CARMODY. That is right.

111 Q. (By Mr. PATTERSON.) Mr. Vosler, do you use United States tires exclusively?

A. No.

Q. You buy tires, then, from other rubber manufacturing companies?

A. Most of our rubber comes from Akron.

Q. Akron, Ohio?

A. Yes, sir.

Mr. PATTERSON. I will ask the reporter to mark these three documents with the next three complainant exhibit numbers for identification.

(The documents referred to were marked respectively, "Complainant's Exhibits Nos. 9, 10, 11" for identification.)

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, you were with the Fruehauf Trailer Company in April 1931 were you?

A. Yes, sir.

Q. Do you recall that the company made application to the United States Patent Office for the registration of a trademark?

A. I do not recall that specifically, no, Mr. Patterson. That was just one——

Q. Well, I hand you what has been marked for purposes of identification as complainant's exhibit no. 9, which purports to be a certified photostatic copy of a declaration filed in the United States Patent Office; and ask you

112 to examine that, and tell me if that is Mr. Freuhauf's signature?

A. Yes, sir; it is.

Mr. PATTERSON. I offer complainant's exhibit no. 9 for identification in evidence, may it please the Board, upon the ground that the photostatic copy, certified under the seal of the United States Patent Office, contains the declara-

tion of Mr. Fruehauf, in which the following statement is made:

That said trade mark——

Mr. KLEIN. Well, now, you are reading——

Mr. PATTERSON. ——"is used——"

Mr. KLEIN. Just a moment. You are reading the exhibit into the record now. Upon what do you base that?

Mr. PATTERSON. Upon the ground that the president of your company says here that they are going to use the trade mark in commerce among the several States.

Mr. KLEIN. Well, now——

Mr. PATTERSON. You know why I want to put it in.

Mr. KLEIN. Well, now, why do you read it into the record, before it has been ruled upon? I do not think that is proper.

Mr. PATTERSON. Well, my statement, of course, is not evidence, anyway.

Mr. KLEIN. If the Board please, this has no application here. We admit that we sell trailers, and that we ship them from Detroit to other States; and that is the only
113 bearing this can have, that we use a trade mark on trailers that are sold in other States. The introduction of the Patent Office application is simply cluttering up the record uselessly, it seems to me.

Mr. PATTERSON. They have to see these admissions in the record.

Mr. KLEIN. Not at all.

Mr. PATTERSON. Oh, yes.

Mr. KLEIN. The Government has got a lot of money to print records with, but we have to spend a lot of money unnecessarily.

Mr. EDWIN S. SMITH. This is not a very lengthy or complicated document, apparently, Mr. Klein.

Mr. KLEIN. No; Your Honor, but it is simply one more of the exhibits which have been going in here, one after the other. I have not objected to the others, but I think I ought to object to this.

Mr. PATTERSON. We have not put in very many photographs as yet.

Mr. CARMODY. The first exhibit that went in struck me as being a fairly sizable exhibit——

Mr. PATTERSON. Yes.

Mr. CARMODY. Respondent's exhibit 1.

Mr. PATTERSON. Yes.

Chairman MADDEN. I think that this is clearly admissible.

Mr. KLEIN. We note an exception to the admission
114 of the exhibit, if Your Honor please.

Chairman MADDEN. You may have an exception.

State of Michigan:)
County of Wayne:) ss.

Harvey C. Fruehauf being duly sworn deposes and says: that he is the Vice-President of the corporation applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes said corporation is the owner of the Trade Mark sought to be registered; that no other person, firm, corporation, or association, to the best of his knowledge and belief, has the right to use said Trade Mark in the United States either in the identical form or in any such near resemblance thereto as may be calculated to deceive; that the said Trade Mark is used by said corporation in commerce among the several States of the United States, that the description and drawing presented truly represent the Trade Mark sought to be registered; and that the specimens show the Trade Mark as actually used upon the device.

Harvey C Fruehauf

Sworn and subscribed to before me this 22nd day of February 1924.

Ray H. Jacobs
Notary Public, Wayne County, Michigan.
My commission expires: Jan 4 1927

(111)

Deh

TO ALL WHOM IT MAY CONCERN:

Be it known that Fruehauf Trailer Company, a corporation duly organized under the laws of the State of Michigan, and having its principal place of business located in the City of Detroit, County of Wayne, and State of Michigan, and doing business at 1090 Harper Avenue, in said City of Detroit, County of Wayne, State of Michigan, has adopted and used the trade-mark shown in the accompanying drawing, for semi-trailers, four-wheel trailers, pole trailers, fifth wheels for semi-trailers, trailer supports for semi-trailers, trailer connections for four-wheel trailers and pole trailers in Class 19, Vehicles, not including engines. The trade-mark has been continuously used in the business of said corporation since June 1st, 1927.

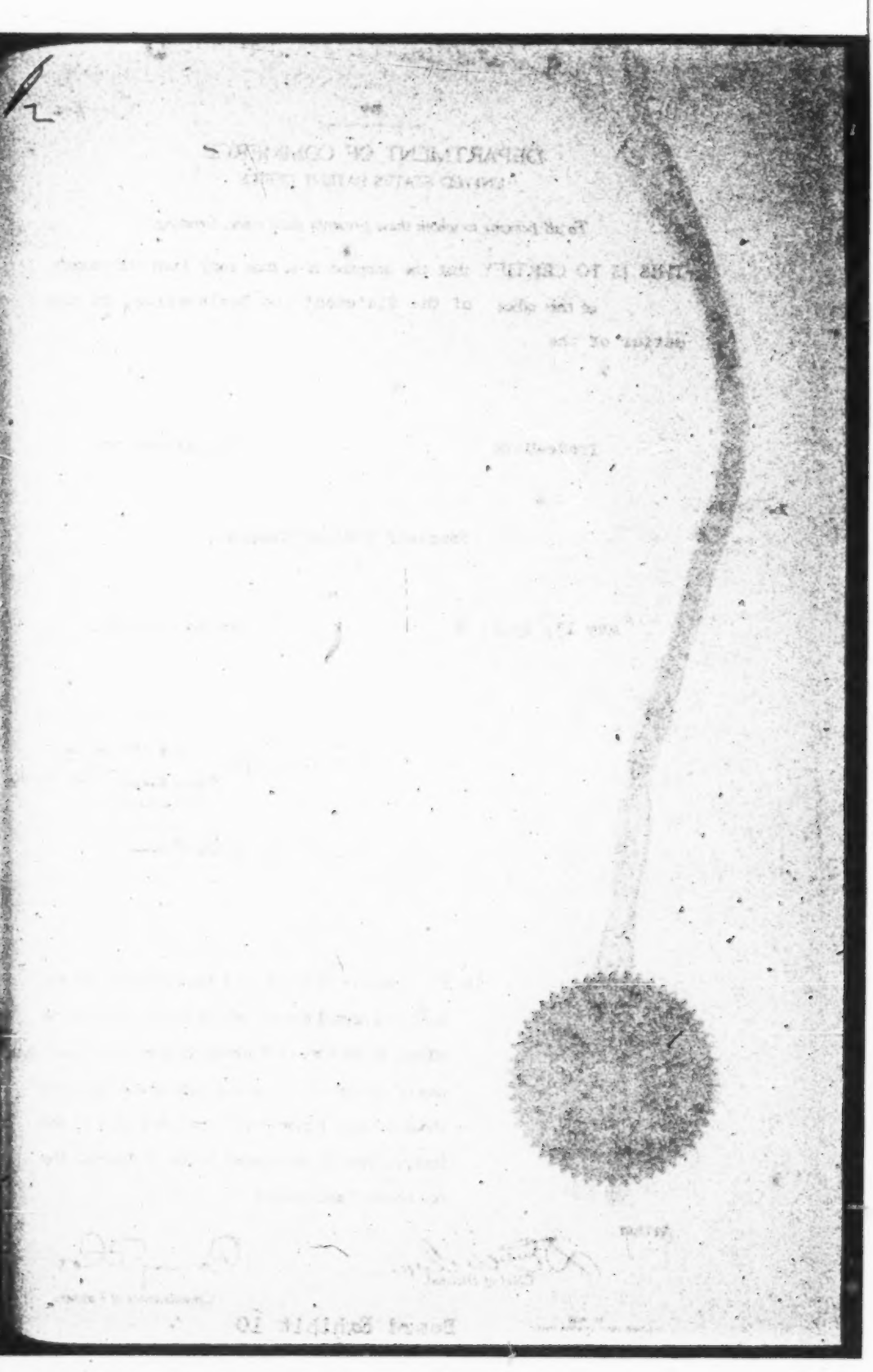
The trade mark is applied to the articles by means of a metal plate.

The mark has been in bona fide use for not less than one year in interstate commerce by the applicant.

Fruehauf Trailer Company
By R. C. Fruehauf, Pres.

Detroit, Michigan,
February 27, 1928.

(ii)



Certified

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Statement and Declaration, in the matter of the

Trade-Mark Registered to

Fruehauf Trailer Company,

May 13, 1924. Number 184,064.

CASE NO. C-2 EXHIBIT NO. 10
IN THE MATTER OF Fruehauf Trailer Co.
DATE 11-6-35 WITNESS Dreher
NORTH & BELIN, OFFICIAL REPORTERS
BY C W Hawkes

In Testimony Whereof I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-eighth day of October, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and sixtieth

Attest:

Chief of Division

Commissioner of Patents.

Board Exhibit 10

UNITED STATES PATENT OFFICE

FRUEHAUF TRAILER COMPANY

REGISTERED SEPTEMBER 21, 1926 TRADE MARK NUMBER 218043

APPLICATION FILED APRIL 23, 1926

TRADE MARK SERIAL 230,621

PAGE 16

(111)

DECLARATION

State of Michigan,
ss:
County of Wayne,

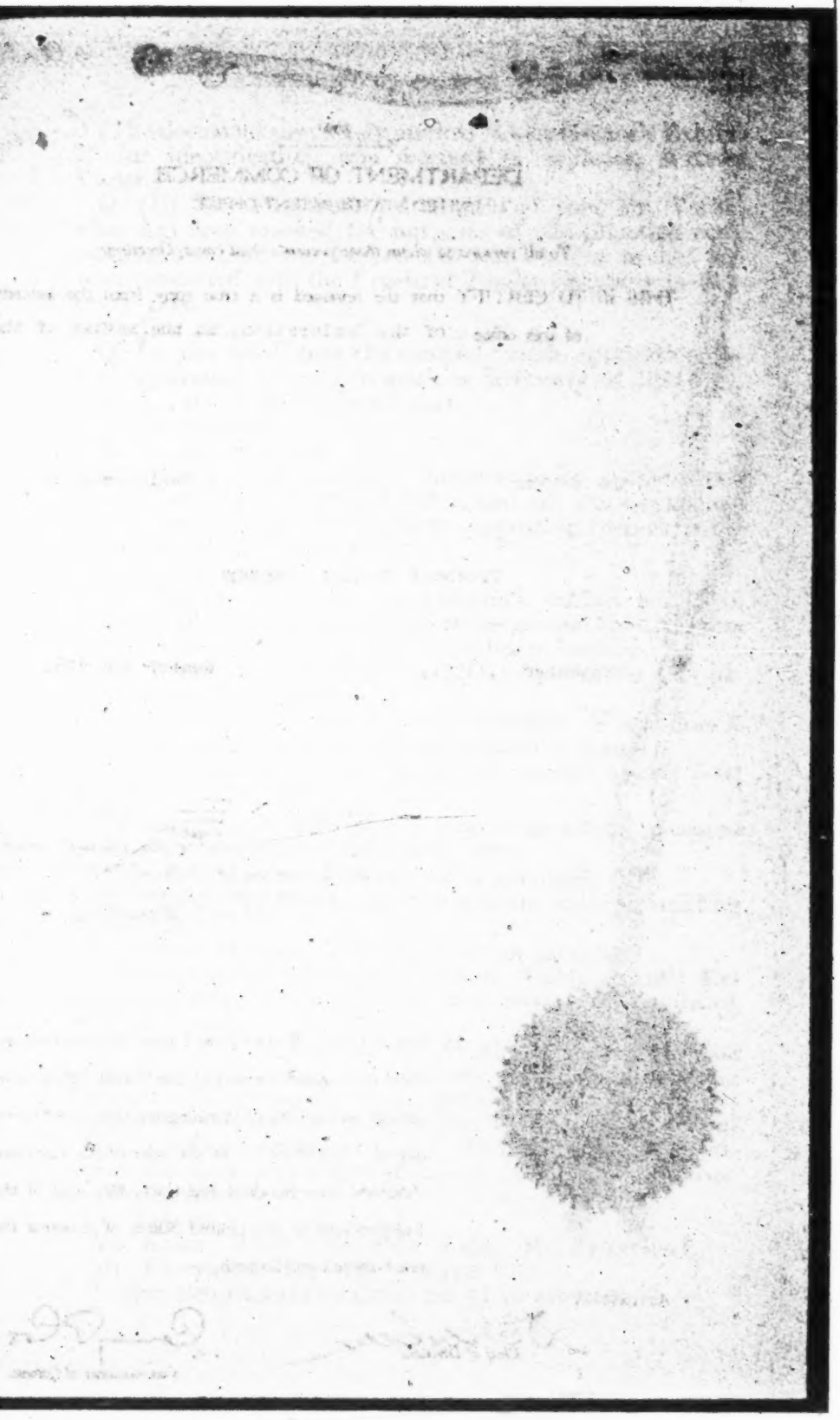
HARVEY C. FRUEHAUF, being duly sworn, deposes and says that he is President of the corporation applicant named in the foregoing statement; that he believes the foregoing statement is true; that he believes the said corporation is the owner of the trade mark sought to be registered; that no other person, firm, corporation or association, to the best of his knowledge and belief, has the right to use said trade mark in the United States, either in the identical form or in any such near resemblance thereto as might be calculated to deceive; that said trade mark is used by said corporation in commerce among the several States of the United States; that the description and drawing presented truly represent the trade mark sought to be registered; and that the specimens show the trade mark as actually used upon the goods.

Harvey C. Fruehauf
President.

Sworn to and subscribed before me, a Notary Public, this 16th day of April, 1931.

Notary Public - Wayne County-Mich.

My commission expires: Dec 4, 1934



all 7 pages

Copy

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Declaration, in the matter of the

Trade-Mark Registered to

Fruehauf Trailer Company

September 1, 1931. Number 286,726.

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-2 EXHIBIT NO. 9
IN THE MATTER OF Maryland Trailer Co.
DATE 11-20-37 WITNESS
SMITH & HULSE, OFFICIAL REPORTERS
BY C. W. Goodrich

IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-eighth day of October, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and sixtieth.

ATTEST:

Chief of Division.

Commissioner of Patents.

Board Exhibit 9

(The document previously marked "Complainant's Exhibit 9" for identification, was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) I now hand you, Mr. Vosler, what has been marked for purposes of identification complainant's exhibit no. 10, and ask you whether or not you were connected with the Fruehauf Trailer Company in February 1924.

A. Yes, sir.

Q. Do you recall that the company made application for the registration of a trade mark in February of 1924?

A. No, sir; I do not recall that.

Q. Pardon me?

A. No, sir; I do not.

Q. Well, I hand you what purports to be a photostatic certified copy, by the Patent Office, and ask you to examine it, and state whether the signature appearing thereon is the signature of Mr. Fruehauf?

A. Yes, sir; it is.

Mr. PATTERSON. I offer complainant's exhibit no. 10 in evidence, if the Board please, upon the ground that it shows an admission by the company of interstate business.

Mr. KLEIN. We interpose the same objection to this exhibit, Your Honors.

115 Chairman MADDEN. Just a moment. Where does it say anything about interstate matters here?

Mr. PATTERSON. It may be on the second page, Your Honor.

That the said trade mark is used by said corporation in commerce among the several States of the United States.

Chairman MADDEN. The exhibit is admitted.

Mr. KLEIN. We note an exception to the ruling admitting the exhibit.

Chairman MADDEN. You may have an exception.

(The document previously marked "Complainant's Exhibit No. 10" for identification, was received in evidence, Witness Vosler.)

Q. (By Mr. PATTERSON.) Mr. Vosler, I now hand you what has been marked for purposes of identification complainant's exhibit no. 11, which purports to be a photostatic copy of a declaration filed in the United States Patent Office, verified the 19th of April 1925, and ask you to examine the same, and state whether or not that is Mr. Fruehauf's signature?

A. Yes, sir.

Mr. KLEIN. What is the date of that, Mr. Patterson?

Mr. PATTERSON. The 19th of April 1925.

I offer complainant's exhibit no. 11 in evidence,

Mr. KLEIN. The same objection.

Mr. PATTERSON (continuing). Containing the statement—

that said trade mark is used by said corporation in commerce among the several States of the United States.

116 Chairman MADDEN. The exhibit is admitted.

Mr. KLEIN. Exception.

Chairman MADDEN. The exception is noted.

(The document previously marked "Complainant's Exhibit No. 11" for identification, was received in evidence, Witness Vosler.)

Mr. PATTERSON. I ask the reporter to mark this booklet complainant's exhibit no. 12 for identification.

(The document referred to was marked "Complainant's Exhibit No. 12" for identification.)

Mr. PATTERSON. I show it to counsel. I am particularly interested in pages 8 and 9.

Mr. KLEIN. Then will you limit the introduction to the particular part of it that you have in mind?

Mr. PATTERSON. Yes.

Q. (By Mr. PATTERSON.) I am handing you herewith, Mr. Vosler, a little book designated on the outside cover as "Engineered transportation" which has been marked for purposes of identification as complainant's exhibit no. 12, and I will ask you whether that volume was published by the Fruehauf Trailer Company?

A. Yes, sir; it was.

Q. Now, directing your attention specifically to pages 8 and 9 of said book, complainant's exhibit no. 12 for identification, where there appears to be a list of customers, their location, and the number of trailers that they have,

117 I will ask you whether or not that list represents Fruehauf customers?

A. I would certainly expect that it did; yes, sir. It came out in the pamphlet.

Q. And does that also represent that the number of trailers set opposite the names of those customers—were all of those trailers built by Fruehauf, and sold to those customers?

A. At least in part; yes, sir.

Q. And would you say that the greater part of those trailers were so built?

A. I mean, at least part of the trailer was made by us, Mr. Patterson. That is, it may not have been made completely by us.

Q. I see. In other words, Fruehauf had some part in the building of all of those trailers there mentioned; is that correct?

A. Yes, sir.

Mr. PATTERSON. I offer in evidence pages 8 and 9 of the

DEPARTMENT OF COMMERCE
UNITED STATES PATENT OFFICE

To all persons to whom these presents shall come, Greeting:

THIS IS TO CERTIFY that the annexed is a true copy from the records of this office of the Declaration, in the matter of the

Trade-Mark Registered to

Fruehauf Trailer Co.,

September 21, 1926, Number 218,043.

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-2 EXHIBIT NO. 11
IN THE MATTER OF Fruehauf Trailer
DATE 11-6-36 WITNESS Vorlen
SMITH & DITLOW
BY C W Yoakum

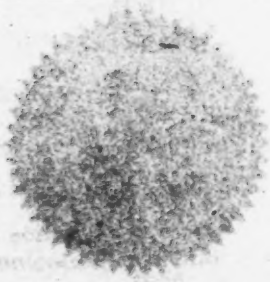
IN TESTIMONY WHEREOF I have hereunto set my hand and caused the seal of the Patent Office to be affixed, at the City of Washington, this twenty-first day of October, in the year of our Lord one thousand nine hundred and thirty-five and of the Independence of the United States of America the one hundred and sixtieth.

ATTEST:

Chief of Division

Commissioner of Patents

Board Exhibit 11



DECLARATION

State of
County of ss

H. C. Freshmuf, being duly sworn, deposes and says that he is Vice President of the corporation applicant named in the foregoing statement; that he believes the foregoing statement is true, that he believes said corporation is the owner of the trademark sought to be registered; that no other person, firm, corporation or association to the best of his knowledge and belief, has the right to use said trademark in the United States, either in the identical form or in any such near resemblance thereto as may be calculated to deceive; that said trademark is used by said corporation in commerce among the several states of the United States; that the description and drawing presented truly represent the trademark sought to be registered; and that the specimens show the trademark as actually used upon the trailer.

H. C. Freshmuf

Sworn and subscribed to before me this 17 day of April, 1925.

R. W. Sacks

Notary Public-Wayne County

My commission expires: June 4, 1927

(11)

UNITED STATES PATENT OFFICE

FRUEHAUF TRAILER COMPANY

REGISTERED MAY 13, 1924 TRADE MARK NUMBER 184064

APPLICATION FILED MARCH 10, 1924

TRADE MARK SERIAL NUMBER 193618

PAGES 424 and 425.

(111)

volume just identified by the witness, headed "Engineered transportation."

Mr. KLEIN. No objection.

Chairman MADDEN. Let the pages designated be admitted.

(The pages designated, of the document previously marked "Complainant's Exhibit No. 12" for identification, were received in evidence, Witness Vosler.)

Chairman MADDEN. We will recess at this time, gentlemen, until two o'clock this afternoon.

118 (Thereupon at 1 o'clock p. m. a recess was taken until 2 o'clock p. m.)

AFTER RECESS

(The hearing was resumed at 2 o'clock p. m. pursuant to the taking of recess.)

Chairman MADDEN. The hearing will come to order.

Mr. PATTERSON. Is the Board ready to proceed?

Chairman MADDEN. Yes.

EARL L. VOSLER, the witness on the stand at the time of recess, resumed the stand and further testified as follows:

Cross examination (continued):

Q. (By Mr. PATTERSON.) Mr. Vosler, have you had an opportunity during the lunch hour to ascertain what the sales of the Fruehauf Company were for 1934?

A. Yes, sir; I got that figure, although that is all that I was able to get, Mr. Patterson.

Q. What were the sales of the Fruehauf Company in 1934?

A. $3,818,000.

Q. Now, comparatively speaking, is the company this year manufacturing more or less trailers than it did last year?

A. More.

Q. They are manufacturing more——

A. Right.

Q. This year?

A. Yes, sir.

119 Q. And at the present time how many employees are employed by the Fruehauf Company?

A. In the neighborhood of 900 I should imagine.

Q. And does that include these employees at the various factory branches?

A. Oh, yes.

Q. How many employees did you employ during the month of June of this year 1935?

A. Well——

Q. (Continuing) That is, more or less than what you now employ.

A. I could not say just how it would run from month to month, Mr. Patterson.

Q. Well, is it not a fact, Mr. Vosler, that in the trailer industry there is a general pick-up in production commencing in about April or May?

A. Yes, sir; or sometimes early—sometimes earlier than that.

Q. And it generally steadily increases month by month, does it not, up until November—October or November of the year; is that not true?

A. No, sir. There is usually a summer slump; that is most generally the case, Mr. Patterson.

Q. Do you recall, Mr. Vosler, having appeared before the National Recovery Administration in connection with the adoption of the code for the trailer industry?

120 Mr. KLEIN. If the Board please, it seems to me that we are getting rather far afield now, from our general line of procedure. As I understand it, we are taking testimony at this time as to the operations—that is the nature of the operations of this company, in which these men were involved, on our motion, or the renewal of our motion to dismiss on the interstate commerce phase.

I thought that we were to be restricted—at least I restricted my questions to that point, and I understood that counsel was to do so until some disposition was made of the point.

Mr. PATTERSON. Well, I am not going into the question of these unfair practices at this time, if the Board please; but reference was made here in this statement at two or three points to the number of employees employed by this company, and the nature of the operations in which they were engaged; and I have a very definite matter that I want to develop in connection with this testimony, dealing with the interstate commerce phase.

Certainly the extent of the business of this company, and the extent of its interstate character, bear very materially upon the question now under consideration.

Chairman MADDEN. It seems to me that the question is relevant.

Q. (By Mr. PATTERSON.) Will you answer my question please, Mr. Vosler.

121 The WITNESS. I do not know that I understood your question. Will you repeat it please?

Mr. PATTERSON. Will the reporter read the question please.

(The question was read by the reporter as above recorded.)

A. Yes, sir.

Q. (By Mr. PATTERSON.) And do you recall, Mr. Vosler, having stated in that proceeding that for the year 1933 your employment was greater in June than it had been in the month of May, greater in the month of July than it had been in June, and greater in August than it had been in the month of July?

A. I think that was the case in 1933; quite different however than most previous years, Mr. Patterson.

Q. It was?

A. Yes.

Q. It was different——

A. Yes, sir.

Q. Than you ordinarily experienced?

A. Yes, sir. As I say, we usually have a summer slump, after a business pick-up in the early part of the year.

Q. Well, now, is it not a fact that during the summer of this year, 1935, the company put on a night shift?

A. I do not know when the night shift was put on, Mr. Patterson.

Q. I see. Are you operating a night shift at the present time, Mr. Vosler?

122 A. In some departments; yes, sir.

Q. I see. And you did not operate a night shift in the early part of the summer?

A. I do not know when it was started.

Q. Who would be able to testify regarding that?

A. Oh, I could find out just when it took place.

Q. All right.

A. But I do not recall at the present time.

Q. All right. Now, Mr. Vosler, you testified that the company had distributors in various parts of the country in addition to these various factory branches. That is right, is it not?

A. Yes, sir.

Q. What is the fact as to whether or not the company, the Fruehauf Trailer Company, consigns merchandise to distributors or dealers?

A. We do that in some instances; yes, sir.

Q. Can you tell me at what locations—or to what points merchandise is consigned?

A. I do not know just where it is, Mr. Patterson, but I know that it is there.

Q. Is it not a fact that you consign a lot of merchandise to the distributor in Richmond, Virginia?

A. Yes, sir.

Q. Yes; and it is to Richmond, Virginia, where

123 much merchandise is sent knocked down, as distinguished from assembled, is it not?

A. That is correct.

Chairman MADDEN. Mr. Patterson, would you have the witness state very briefly what he means by "consigned"?

Mr. PATTERSON. I shall be glad to do so, Mr. Chairman.

Q. (By Mr. PATTERSON.) Mr. Vosler, will you relate to the Board what you mean by the consignment of merchandise?

A. Well, when merchandise is consigned, I mean that the company holds title to it.

Q. In other words, when you make a consignment of goods to a distributor, the company retains the title to the property?

A. Yes, sir.

Q. And any sale that is made by the distributor must be approved by the company?

A. No.

Q. How?

A. That is not the case.

Q. Well, then, the distributor must account to the company for the sale?

A. When the distributor sells anything out of that consigned stock, he pays the company for it.

Q. I see. Well, you permit the respective—well, let me withdraw that.

The possession only of the merchandise, or the
124 trailer that is consigned, passes to the distributor?

A. Yes, sir.

Q. And the ownership remains with the company?

A. Yes, sir.

Q. Mr. Vosler, one of your large customers is the Keeshin Motor Express Company, is it not?

A. Yes, sir.

Q. Can you tell the Board how many trailers were manufactured this year for the Keeshin Motor Express Company?

A. Why, I expect 200.

Q. 200 trailers?

A. Yes, sir.

Q. This year?

A. Yes.

Q. Are the trailers that are made for the Keeshin Motor Express Company made according to specifications furnished the Fruehauf Trailer Company by the Keeshin Motor Express Company?

A. In some respects they are, yes, sir.

Q. Can you tell the Board what business the Keeshin Motor Express Company is engaged in?

A. Keeshin Motor Express Company is engaged in the transportation of merchandise over the highways.

Q. The business of the Keeshin Motors Express Company is essentially and exclusively a transportation business, is it not?

A. They haul freight over the highways; yes, sir.

125 Q. And these orders for 200 trailers so far this year were obtained from the Keeshin Motor Express Company, were they not, as a result of the efforts of Mr. Fruehauf himself?

A. Well, I do not know that that is the case.

Q. You do not know that?

A. No, sir.

Q. Do you know, Mr. Vosler, why the Keeshin Motor Express Company needed 200 new trailers this year?

A. I expect to haul freight.

Q. Do you know, Mr. Vosler, that the Keeshin Motor Express Company has entered into a contract with several railroads whereby short hauls, up to 250 miles, are made by trailer, and for the longer hauls, longer hauls than that, they roll the trailers onto freight cars?

A. I do not know what kind of a contract they may have with anybody.

Q. But you do know they have made such a contract, do you not?

A. No.

Q. You do not know that?

A. No, sir.

Mr. KLEIN. Now, if the Board please, I have not objected so far, but it seems to me that this whole line of examination is certainly getting pretty far afield. We are interested here in the problem of relationship of employer to

126 employees, which we submit, in and of itself, is not interstate commerce. The matter of to whom certain trailers are sold, outside of giving the Board a general picture of the situation, has no bearing on that relationship; and what is more, the ultimate use by the ultimate consumer has no bearing on the operations of the Fruehauf Trailer Company in its manufacturing business.

Chairman MADDEN. Well, now, I thought that before we ruled on this question we were going to have the benefit of the testimony of this witness, both on direct examination and on cross examination, as to the nature of this business. We would really like to have that.

Mr. KLEIN. All right, sir.

Q. (By Mr. PATTERSON.) Mr Vosler, where are the headquarters of the Keeshin Motor Express Company located?

A. I believe in Chicago.

Q. And you know, do you not, that the Keeshin Motor Express Company transports freight throughout the United States?

A. I do not know how far they transport freight, Mr. Patterson.

Q. Well, you know that they transport freight beyond the borders of any one State, do you not?

A. Yes, sir; I know that.

Q. So that the trailers, which the Fruehauf Trailer Company makes for the Keeshin Motor Express Company, become instrumentalities of interstate commerce, do they not?

Mr. KLEIN. Well, now, I object to that question.

127 That question calls for a legal conclusion. Let us get the facts, and the Board can draw its own conclusion from the facts as it sees them. What are instrumentalities of interstate commerce is a legal conclusion.

Chairman MADDEN. The witness has stated that he knows they transport freight interstate.

Mr. KLEIN. Well——

Chairman MADDEN. Do you want to add anything to that statement?

The WITNESS. I do not know just what more I could add, Mr. Chairman. I know that the Keeshin Motor Express Company operates more than within the State of Illinois, but just how far its business extends, I do not know.

Mr. PATTERSON. Very well.

Q. (By Mr. PATTERSON.) Now, then, Mr. Vosler, can you tell me any other dealer or distributor other than the Carter Trailer Sales in Richmond, Virginia, to which the Frehauf Trailer Company consigns trailers or parts or accessories?

A. I do not know just where they may be, Mr. Patterson, but I know we have some others.

Q. You know that there are some besides the Richmond, Virginia, concern?

A. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) That is, at points outside the State of Michigan, Mr. Vosler?

128 A. Yes, sir.

Q. (By Mr. PATTERSON.) Mr. Vosler, do you know what the relative position is which the Fruehauf Trailer Company occupies respecting the entire trailer industry?

A. I do not know that I just understand your question, Mr. Patterson.

Q. Well, is it a fact that the Fruehauf Trailer Company is the largest manufacturer of trailers in the country?

A. I think it is.

Q. Well, you so advertise it, do you not?

A. Yes, sir. That is why I say, I think it is.

Mr. KLEIN. You hope so, anyway.

Mr. PATTERSON. Even with an unfair trade practice.

Q. Now, Mr. Vosler, the Fruehauf Trailer Company owns a subsidiary known as the Fruehauf Trailer Sales Company, does it not?

A. Yes, sir.

Q. And just what is the status of that company; is that a wholly-owned subsidiary?

A. Yes, sir.

Q. Just what is the function and business of the Fruehauf Trailer Sales Company?

A. I really do not know, Mr. Patterson. I cannot answer; I am not clear enough on the details of that to explain it to you. I do not know.

129 Q. Well, let me ask you this question: When a trailer is sold, irrespective of where it may be sold, at one of your factory branches, or through a dealer or a distributor, and the buyer, as a part of the purchase price, executes a note and mortgage on that trailer, that note and mortgage are payable to the Fruehauf Trailer Company, are they not?

A. I believe that is correct.

Q. And then the Fruehauf Trailer Company sells and negotiates that paper to the Fruehauf Trailer Sales Company, does it?

A. I think that is the way of it; yes, sir. I am not clear on it, however.

Q. All right. Does the Fruehauf Trailer Company finance any of its sales of trailers through any other financing institution, other than the Fruehauf Trailer Sales Company?

A. Not at the present time.

Q. So the Fruehauf Trailer Sales Company is handling all of the paper at the present time?

A. I think that is right.

Q. Now, Mr. Vosler, besides shipping a lot of your trailers, and parts, and accessories by rail, the company ships a lot of them by trailer also; is that not true?

A. By motor truck.

Q. And what ordinarily does the company ship by motor truck?

A. It ships finished trailers and parts.

Q. Does it ship wheels?

130 A. Yes, sir.

Q. Rims?

A. Where they are needed.

Q. Does it ever ship frames?

A. Perhaps so. I do not recall of anything of that kind ever going out, but it might have.

Q. Is it not a fact that in most of the branches maintained by your company, it has trailer frames on hand?

A. No, sir.
Q. Do you——
A. (Continuing.) We only send a trailer frame out when they want to replace any frame that has been broken.
Q. I see.
A. Or to replace a frame that might have been wrecked, or that had had something of that sort happen to it.
Q. They do not carry them in their inventory stock?
A. No, sir.
Q. In the various factory branches?
A. No, sir.
Mr. PATTERSON. I will ask the reporter to mark this document Complainant's Exhibit No. 13 for identification.
(The document referred to was marked "Complainant's Exhibit 13" for identification.)
Q. (By Mr. PATTERSON.) Mr. Vosler, I hand you what has been marked "Complainant's Exhibit No. 13",
131 for purposes of identification, which appears to be a feature story in the Detroit Sunday Times of October 20, 1935; and ask you whether you know anything about that?
A. No, sir; I do not.
Q. Had you seen it?
A. No, sir; I have never seen it.
Q. You never saw it?
A. No, sir.
Q. So you did not consult anybody in connection with the newspaper, regarding that story?
A. No, sir.
Q. All right. By the way, Mr. Vosler, who does your shipping, so far as motor truck shipments are concerned?
A. Do you mean——
Q. Who is your shipper?
A. Oh. On the——
Q. On the drive-away.
A. Palazolla.
Q. Mike Palazolla?
A. Yes, sir.
Q. And what percentage of your company shipments, outside of the State of Michigan, are by motor truck?
A. I could only hazard a guess on that, Mr. Patterson, but I would imagine that 50 per cent of them were.
Q. 50 per cent?
132 A. Yes, sir.
Q. 50 per cent of those shipped out of the State of Michigan, are by motor truck.
A. They would not all go over that route, though, Mr. Patterson. Many times the customers come and pick their

own vehicles up; but together, it would probably represent 50 per cent, I should say; yes, sir.

Q. I believe that you testified, Mr. Vosler, although I am not wholly sure, that this Toronto, Canada Company is a wholly-owned subsidiary?

A. Yes, sir.

Mr. PATTERSON. Now; if the Board will indulge me for just one moment.

Q. Mr. Vosler, in the construction of trailers, or frames, or bodies, or what-not, you do not give a particular group of employees the job of doing work on trailers sold in Michigan, and another group of employees the job of doing the work on trailers sold beyond the State of Michigan, do you?

A. No, sir.

Q. In other words, they all work together?

A. Yes, sir.

Mr. PATTERSON. Now; may it please the Board, so far as the interstate commerce aspect of this case is concerned, I think that I have completed my cross examination of Mr. Vosler.

Mr. KLEIN. I have just a few more questions, to
133 complete that phase.

Mr. PATTERSON. Yes. I am not going to argue the question at this time.

Mr. KLEIN. No.

Mr. PATTERSON. But I just want to make this point at this time, if the Board please: Since Mr. Vosler has taken the witness stand for the purpose of testifying in this case, I should like to cross examine him regarding other aspects of this case.

Now, would counsel have any objection to permitting Mr. Vosler's coming back to the witness stand later on, for purposes of cross examination?

Mr. KLEIN. Oh, at a later time he will be in court, if you wish to call him.

Mr. PATTERSON. Very well.

Mr. KLEIN. He will be here during the entire proceeding.

Mr. PATTERSON. Very well. Then I have no further questions of Mr. Vosler at this time, Mr. Chairman.

Mr. KLEIN. I would just like to clear up a few points, if the Board please, so that the Board may be correctly advised as to the facts.

Redirect examination.

Q. (By Mr. KLEIN.) I wonder, Mr. Vosler, if you would describe to the Board the function of the fifth wheel, so called, what is known as the fifth wheel. A good
134 many people do not understand that. Mr. Carmody,

being an engineer, perhaps does, but I am not sure that the rest of the Board does.

Mr. EDWIN S. SMITH. I always thought that a fifth wheel was something derogatory.

Mr. CARMODY. All the more reason for having the witness describe its functions.

Mr. KLEIN. Yes.

A. Why, the fifth wheel——

Chairman MADDEN. That really is the main talking point for Fruehauf Trailers; is it not?

Mr. KLEIN. I wonder whether counsel has that exhibit available?

Mr. PATTERSON. It is on the bench there, I believe.

Mr. KLEIN. Exhibit 8.

Q. Exhibit No. 8 of the Complainant, Mr. Vosler, shows—or has a picture of a fifth wheel; is that correct?

A. Yes, sir.

Q. That is a sort of plate; is it?

A. That is an assembly of a corrugated steel plate, with this turntable fastened on it; and that plate is fastened to the chassis of the truck by bolts, with generally a strip of wood between the truck frame and the plate itself.

Q. In other words, it is a loose part, is it not, that is manufactured by you, and fastened on the truck tractor?

A. Yes.

135 Q. Not on the frame, but fastened on the truck tractor.

A. Yes, sir.

Q. That pulls the trailer.

A. That is correct.

Q. And this back wheel part here connects up with a little knob on the trailer; does it not?

A. I think that is a lever there. There is a knob on the trailer that enters this opening.

Q. Yes.

A. And it just automatically clicks there. This lever at the front is the unlocking lever.

Q. But the fifth wheel is on the truck tractor?

A. Yes.

Q. Fastened to the truck tractor.

A. That is right.

Q. And then when they want to haul a particular trailer, they take this plate, or the fifth wheel there, and hook it up to the trailer; is that correct?

A. It will go on any trailer.

Q. But it is fastened to the truck tractor?

A. Yes, sir.

Q. And it is really a truck tractor part; is it not?

A. Yes, sir.

Q. You make them for your safety devices, and other things, in connection with the operation of your trailers?

136 A. It is classified by the railroads as a truck tractor coupler.

Q. Yes.

A. And not as part of a trailer.

Q. Now, just a moment further.

Chairman MADDEN. Let me see that please, counsel.

Mr. KLEIN. Oh, yes. I am sorry.

Q. Now, a truckman having fastened that to his tractor, can use that in hauling other trailers, can he not?

A. Yes, sir.

Q. And if he wants to change it from one truck to another, it is an easy job just to lift it up and turn a few bolts, and fasten it to another truck tractor, is it not?

A. Ordinarily that is done, Mr. Klein, when a customer trades a tractor. He just removes that coupler, and puts it on the other tractor.

Q. And it is nothing——

A (continuing). That is not an assembly operation.

Q. It is nothing that you can do at your factory, because you do not fasten it on your trailers, do you?

A. Only when a customer might——

Q. Bring a tractor in?

A. Brings a tractor in to have it done.

Mr. EDWIN S. SMITH. Counsel, if I may interrupt——

Mr. KLEIN. Certainly.

137 Mr. EDWIN S. SMITH. I would like to ask the witness: Do you mean that this connecting link is not specifically adapted to fastening onto the Fruehauf trailer, but that it can be used equally easily on any other trailer; or would some adjustment be necessary?

A. Why, that is pretty much of a standard coupler. It would fit a trailer that any manufacturer makes. Some manufacturers have another type of trailer, as we do, which would not fit to that coupler; what we call an automatic trailer.

Q (by Mr. KLEIN). And this is sometimes called a tractor-trailer coupler part, is it not?

A. That is the way it is classified in the classification, yes, sir.

Q. Now, that is not really an assembly operation, then, is it?

Mr. PATTERSON. Just a moment; that is objected to as a conclusion.

Mr. KLEIN. I am asking——

Mr. PATTERSON. Whether or not it is, would depend upon the facts.

Mr. KLEIN. I am asking the witness for the fact. He says it is not.

A. As I would interpret it; no.

Q. No.

A. There is a charge connected with that of from
138 $4 to $6, a labor charge, for attaching that.

Q. Now, with reference to the special jobs, so-called, Mr. Vosler, that Mr. Patterson referred to this morning: Do you have to buy materials specially for so-called special jobs?

A. Very seldom.

Q. Do those—pardon me?

A. (continuing). A special job usually consists of parts we have on hand. We use a frame that we have on hand, or we use springs, axles, hangers, brake equipment, and so forth, that we have in stock.

Q. Well, when you——

A. But——

Q. Pardon me.

A. There might be a variation in the frame length, and the tire size, and the brake size.

Q. When you use the words "special engineering" or "special job", what do you mean in that connection?

A. Well, that is simply a matter of—just as I said, there; the customer may want a frame that is 20 feet long instead of one that is 18 feet long, so we have to take a 20-foot frame out of stock, instead of an 18-foot frame out of stock.

Q. And you consider his problem, from an engineering point of view, as to whether that length of frame will do his job?

A. That is right.

139 Q. But the materials are drawn from standard parts in stock, are they?

A. The materials are taken from stock; yes, sir.

Q. But you may vary the body size?

A. That is usually the principal matter of variance.

Q. Yes; but you have different designs?

A. Yes.

Q. And sometimes you make special designs?

A. Yes, sir.

Q. That is all done right at your factory though, is it not?

A. Yes, sir.

Mr. KLEIN. I think that is all.

Recross examination:

Q. (By Mr. PATTERSON.) Mr. Vosler, is it not a fact that very often a trailer job is held up for a few days until you

get the particular brake that the customer wants on it, or the particular wheel, or the particular rim that the customer wants on it?

A. It would not happen very often, Mr. Patterson.

Q. Well, it does happen though, does it not?

A. Well, I do not recall of its having happened.

Q. Well——

A. I cannot say that it never did, either.

Q. Well, does it not frequently happen that you have an order for a trailer of a particular design, and you
140 do not have in stock the particular brake apparatus that the customer wants on that trailer, and you have to await the shipment of that brake apparatus from Bendix, or the Inland Steel, or from whatever company you may get it?

A. Well, it would be a very unusual thing, to have that happen, because we carry a complete line of Midland brakes, and Bendix brakes, and Westinghouse brakes, and we carry hydraulic brakes in various sizes, and we have a very complete stock of brake parts; and it would be very seldom. However, occasionally that arises, where a trailer would be ordered with some very huge tires, or something of that sort, where we would have to wait for them.

Q. Yes.

A. But it would be very unusual.

Q. Now, going back to your discussion of the fifth wheel: Most of the trailers utilized today are so-called semi-trailers, are they not?

A. Yes, sir.

Q. They have wheels at the back end of the trailer, and the mechanism connects up with the connecting link on the front end?

A. That is right.

Q. With a little stand in front, on which they can stand when not connected with the tractor.

A. Yes, sir.

141 Q. That is right, is it not?

A. Yes, sir.

Q. So that if you sell a trailer to a particular customer, in New Orleans, let us say, who does not have a fleet of trailers, but has a tractor, a part of that sale consists of the fifth wheel, and its installation, does it not, in many cases?

A. In numerous cases, it does; yes, sir.

Q. Yes.

A. (Continuing.) And on the other hand, he may also have a tractor with the fifth wheel, and one trailer, and he buys another trailer, and we do not sell the fifth wheel,

Q. Well, you manufacture a great number of fifth wheels, do you not?

A. Yes, sir.

Q. You manufacture about as many fifth wheels as you do trailers, do you not?

A. I expect so; I could not say, but I expect that is true.

Mr. PATTERSON. That is all.

Examination by the bench:

Q. (By Chairman MADDEN.) Mr. Vosler, what would be the effect upon interstate commerce of a successful strike in those departments of your plant where these men named in the complaint work?

A. Well——

Mr. KLEIN. If the Board please, that calls for a
142 legal conclusion, as to the effect on interstate commerce.

Chairman MADDEN. Well——

Mr. KLEIN. It seems to me it follows that if there is a strike anywhere, even if it is in a corner grocery store, where the operator buys merchandise out of the State, there is no doubt but what the shipments may be withheld for a while.

But as to the effect on interstate commerce, that calls for a legal conclusion, which I submit must be drawn by the Board from the facts.

Chairman MADDEN. No; I am asking this witness what would be the factual effect on interstate commerce.

A. Well, I do not know, Mr. Chairman. I cannot imagine anything like that. We have never had a delay of any kind in our operations, and I do not know just what the result would be.

Q. (By Chairman MADDEN.) Well, Mr. Vosler, I am asking you to imagine a successful strike in those departments of the plant where these men worked. Suppose these men went out on strike, and either by persuasion, or violations, or because of a scarcity of other men, or for any reason whatever, you did not replace them.

Mr. KLEIN. Well, if the Board please, I submit that that is something that Mr. Vosler cannot hazard a guess upon. It is just a guess as to what would happen. The men would not be working——

Chairman MADDEN. Could you not hazard a guess?

143 Mr. KLEIN. Well, that would not be testimony here, and I do not think that is the proper way to frame the question.

Chairman MADDEN. Your guess would not be a legal conclusion at all; it would be a factual conclusion, would it not?

Mr. KLEIN. I do not believe so.

Chairman MADDEN. If the operations of the factory stopped, then goods would stop coming into the factory from other states, and the products would stop going out of the factory to other states, would it not?

Mr. KLEIN. That is true.

Chairman MADDEN. You would know that, would you not?

Mr. KLEIN. As I say, I think that follows with any industry, of course.

Chairman MADDEN. Well, does not this man, who is an executive in this industry, know that?

Mr. KLEIN. Anyone knows that, whether it be a corner grocery store, or a farm, or anything else.

Chairman MADDEN. Then why not let the witness answer my question, as I have put it?

Mr. KLEIN. Because I do not think it is a proper question in this proceeding, if the Board please. It appears to me that the operation that we are here interested in is a manufacturing operation. There is no doubt, whatever, it follows that if any manufacturing operation is stopped, materials are not used, and if those materials are
144 brought in from outside of the State, they are not brought in, temporarily, to the man who is running that manufacturing operation. They may be brought in to other men, but they are not brought in to him, and he is not shipping any finished manufactured product out after a manufacturing operation.

But we are here interested in a manufacturing operation——

Chairman MADDEN. Well, now, Mr. Klein, you will have your opportunity to draw your legal conclusion as to whether that is the kind of thing which lawyers and the courts mean by the technical expression, "affecting interstate commerce."

What I should like to get for the moment, if you will permit me to do so, is the fact of the thing, leaving aside any question as to what lawyers mean by the expression "affecting interstate commerce."

Leaving that aside, let us see what laymen mean by it.

Mr. KLEIN. But this is a legal proceeding, I assume. I think it follows that if any factory is shut down, that particular factory has no more merchandise shipped to it while it is shut down. Some other factory might buy that merchandise, instead of this one. I think it follows that while they are on strike, if they were on strike—although they have had no such problem that I know of—there would be a temporary shut-down in the raw materials coming in to them. But as I say, the raw materials might be shipped to

another factory, that would be getting the business.
145 They would not stop; they would simply be shifted.

Mr. PATTERSON. Well, it seems to me, if the Board please, that that is not any more speculative, as counsel claims it is, than the interpretation which respondent has asked this witness to place upon the installation of the fifth wheel, or the changing of the type of brakes down in Dallas, Texas, or the changing of the type of springs or axles in Denver, Colorado, or Long Island City.

Now, he has given us the interpretation that he places upon that, and he says that is not assembly. Now, the Board here has asked this witness as to the effect of a cessation of employment, if one should occur, in this factory.

I do not think that there is anything particularly speculative about that.

Mr. KLEIN. Well, I think that there is. For instance, if there were a demand by customers in this country for one thousand trailers in one week, let us say, if the Fruehauf Trailer Company does not sell them those trailers, because they happen to have a strike, why, some other person will sell those trailers.

Mr. PATTERSON. How do you know they will?

Chairman MADDEN. I wonder——

Mr. KLEIN. They might. It is a speculation.

Mr. PATTERSON. Yes.

Mr. KLEIN. But they would be getting the addi-
146 tional material into their factory, to make those trailers, to make those sales, while we could not sell them.

Chairman MADDEN. Those shipments, then, would be going into other States than Michigan?

Mr. KLEIN. They might be.

Chairman MADDEN. Where they are now going into Michigan.

Mr. KLEIN. They might.

Chairman MADDEN. They would also be going out of other States than Michigan, where they are now going out of Michigan.

Mr. KLEIN. They might, depending on where the other manufacturers were, where the other competitors were.

Chairman MADDEN. And would that or not be affecting interstate commerce?

Mr. KLEIN. There might be a shifting of the destination of the shipments, but I do not think that the witness can fairly guess that it would affect the amount of the shipments in interstate commerce, of the raw materials.

Chairman MADDEN. But that is not all that there is to affecting interstate commerce, is there—affecting the amounts?

Mr. KLEIN. Well, I think——

Chairman MADDEN. Suppose you affect direction, and ship west instead of east, or you ship north instead of south?

Mr. KLEIN. Well, as I understand it——

147 Chairman MADDEN. And you ship a man now instead of three months from now. You see, it is quite evident, from your own observation, that this question of affecting interstate commerce is a highly peculiar question, is it not?

Mr. KLEIN. Well, the Supreme Court has made it very clear and definite, in stating that manufacturing is not——

Mr. PATTERSON. That is what you think.

Mr. KLEIN. And that shipments preceding manufacturing, are not.

Chairman MADDEN. Now, if that is, as it is, a highly technical question, why can we not go ahead here and get the factual basis to which we can apply the technical requirements in this case? You recall the observation by the United States Supreme Court, that this question goes by cases, do you not?

Mr. KLEIN. Exactly.

Chairman MADDEN. It is determined by the individual cases.

Mr. KLEIN. Yes.

Chairman MADDEN. Well, then, why not let us get all of the facts in this case, and see what we have here?

Mr. KLEIN. We want the facts, of course, but I object to the question as propounded, as calling for a speculative answer. Your question is——

148 Chairman MADDEN. Well, now, Mr. Klein, you know perfectly well it is not even speculation. You could answer it, and every merchant in every line of business could answer it; the first man you met on the street could answer it, could he not?

Mr. KLEIN. He could not answer——

Chairman MADDEN. If a factory stops, the raw materials will stop coming in to that factory.

Mr. KLEIN. To that factory.

Chairman MADDEN. And the finished product will stop going out from that factory.

Mr. KLEIN. That is right.

Chairman MADDEN. Now, if everyone in the world can answer it, why not let this man answer it?

Mr. KLEIN. But your question was broader than that, sir. Your question was not limited to that, as I understood it. In other words, although it might stop shipments, into one factory, that volume of shipments might go elsewhere to the party selling more trailers than Fruehauf.

Chairman MADDEN. Very well.

Q. Modifying the question, Mr. Vosler, so that it would be limited to the commerce coming into and going out of your factory, what would you say would be the effect of a successful strike in those departments of your factory where these men work?

A. Well, in the event of such an occurrence, Mr. Chairman, we naturally would not buy—or have these materials coming into our plant.

149 Q. No?

A. (Continuing.) I do not think, however, that that is any different from what would take place in many other cases. That would be true of any manufacturer; that would be true of the J. L. Hudson Company here, the department store. It would be true of the farmer who raises potatoes in Maine.

Q. Now let us get the rest of your answer, Mr. Vosler. You say that you would stop buying raw materials——

A. Yes.

Q. If the factory were not operating?

A. Yes.

Q. What about selling the finished product?

A. After a certain period of time, we probably would not have anything to sell.

Q. And, therefore, you would neither sell nor ship trailers.

A. That is correct.

Q. Now, that would be different to that extent, would it not, from your retail store here, for example? If a successful strike closed such a store the goods would stop coming in from other States, would they not, but goods would not stop going out to other States because they would not be in the habit of going out to other States before, would they?

A. Well, most of those stores do a mail-order business, Mr. Chairman.

Q. Let us consider a local retail establishment,
150 where they do not sell any of their goods outside of the State, or do not sell any substantial amount of their goods out of the State.

A. Yes; that is true, then.

Q. So that there would be a difference, would there not?

A. A difference from what?

Q. There would be a difference between your enterprise where your raw materials come in, and your finished product goes out, and both of those processes would stop, and the retail merchant; there would be a difference between that, and the case of the local retail merchant—would there not?

Mr. KLEIN. I do not see any difference.

Chairman MADDEN. Pardon me?

Mr. KLEIN. I do not see any difference.

Chairman MADDEN. You do not see any difference——

Mr. KLEIN. It is just a matter of degree, that is all.

Chairman MADDEN. You do not see any difference between stopping the flow of something, damming back the stream above, and shutting it off below? Do you not see any difference between that, and another situation where you simply shut it off above, but there has not been any flow below?

Mr. KLEIN. No.

Chairman MADDEN. Now, you may not think that is a legally material difference——

Mr. KLEIN. No; I do not.

Chairman MADDEN. That of course is purely a legal
151 conclusion.

Mr. KLEIN. I think so.

Chairman MADDEN. But certainly you see a factual difference there, do you not?

Mr. KLEIN. Well; as I said before, Mr. Chairman, I think that is true in any situation. Now, the man who is in business, must buy, and he must sell; but if he buys from out of the State, there is still that much of interstate shipments.

Chairman MADDEN. And you do not see any difference——

Mr. KLEIN. No.

Chairman MADDEN. Depending upon what the business is?

Mr. KLEIN. It is just like a farmer; he brings in things from out of the State and ships his products to destinations out of the State. It would be the same situation; and I do not think that Congress can regulate farming operations that way. I think that the Supreme Court has passed on that, just like mining. Any of those operations are local in character, although they may have at some stage to bring in supplies to the operation, and then ship the product out of the State when it is completed. But the operation itself is local.

Chairman MADDEN. Your contention is, in other words, then, that this business is in all relevant particulars just like a corner grocery store, or just like a farm?

Mr. KLEIN. Yes; like a farm, or like a mine, or like any other manufacturing business; there is no question about it.

152 Chairman MADDEN. And like a corner grocery store?

Mr. KLEIN. Yes; but to a lesser degree, naturally.

Chairman MADDEN. How do you mean?

Mr. KLEIN. A corner grocery store does less business. The

corner grocer buys less material from out of the State, and if he should happen to close down——

Chairman MADDEN. And he sells practically nothing out of the State.

Mr. KLEIN. That is true.

Chairman MADDEN. And to that extent he is different?

Mr. KLEIN. To that extent he sells in the State, and he also sells out of the State.

Chairman MADDEN. And you think this is not a legally relevant matter?

Mr. KLEIN. I do not think it is material here.

Chairman MADDEN. Well, then, let me ask my question again. Do you say that for all legally relevant purposes, your client is just like the corner grocer, or the farmer?

Mr. KLEIN. Yes.

Chairman MADDEN. You say that?

Mr. KLEIN. Yes, sir; just like a mine, or like a farm, exactly.

Chairman MADDEN. Well, that makes your position very clear.

Mr. KLEIN. And I think that the Supreme Court
153 has so stated also, and I will quote from their opinion when you give me the opportunity.

Mr. PATTERSON. Does the Board have any further questions?

Mr. EDWIN S. SMITH. Yes, sir; I would like to ask one or two questions.

Q. Mr. Vosler, when you were reading your statement, I notice down here, pages 9 and 10, where you made some reference to inventory?

A. Yes.

Q. Referring to the bottom of page 9, you say: "For the most part, the materials"—or, pardon me; page 8, I refer to the last sentence on page 8, where you say:

For the most part, the materials are kept in this inventory for a month, and sometimes upwards of two, three, and four months before they are manufactured and become a part of an assembled, finished trailer.

Then at the end of the paragraph on page, you say:

Materials are bought in anticipation of orders for trailers being obtained at some time in the course of business.

Then on page 10 you say, in the middle of the paragraph, the first paragraph under the heading "Manufacturing Operations" as follows:

The manufacturing operations are performed upon the various materials from the material inventory at the factory, which has been there from one to three or four months, depending on the
154 **nature of the material.**

I would assume, and I would like to have you tell me if this is correct, that, like most concerns engaged in the automotive business, your company makes an effort to buy its raw materials or semifinished materials as closely as possible to the time when they are needed in the active course of your manufacturing operations; is that so?

A. Yes, sir; that is true.

Q. Well, now, what is this different material, or what are these different types of material, where in some cases you have an inventory three or four months ahead, and in other cases only one month ahead?

A. Well, we have items that come to us in a rough state, like malleable castings, which we have to buy in large quantities, and it takes quite a long time before they go through the plant and are ready to go into the finished trailer.

There are other items, such as rubber tires, which are bought completely manufactured, and we do not do anything to them, so that we do not have to carry them in stock as long as the original rough castings would be carried in stock before they would go into the finished trailer.

Q. Then the rough casting which you buy is actually put into operation—or at least something is done to it, about as soon as you get it; is that correct?

A. Yes, sir; that is true. It does not stay there a
155 month, usually, before there is anything done to it. It would be there a month before it was finished.

Q. Yes; I understand that distinction. Now, there is just one other point. On page 14 of your statement, and also on page 17 I want to refer to a couple of statements there. Pardon me. I am mistaken. The statement that I have in mind now begins at the bottom of page 12, the last sentence, reading as follows:

> If one of the men in the gang in this operation is not efficient or does not work in harmony with the other men in the gang in this work, the production is slowed up, and the efficiency of the crew as a whole is lowered.

And on page 17, at the end of the paragraph, you state:

> In various phases of bodybuilding, two or three men work in teams, as may be seen, and unless there is the efficiency in workmanship and harmonious cooperation, the production will be delayed, to the detriment of the other fellow workers on the team.

I am not sure just what you had in mind, in making those statements; what connection you had in mind between the situation you refer to, and the interstate commerce phase; but since the statement is in there, I would like to ask you just what you mean by your reference to harmonious cooperation?

A. Well, that is just a general statement of fact, that if

the men do not work together, there is not the har-
156 mony between them, and naturally the work shows down.

Q. Well, what sort of a situation would arise, where they would not work together? I am just trying to get a picture in my own mind of the nature of these men's work.

A. Well, take a riveting gang, where there is a rivet heater, and a receiver of rivets, and a fitter, and a hammer man, and a bucker-up. There are five men working in the team there.

Q. Yes.

A. And if they do not work together, the whole operation just slows down.

Q. Do you mean, if one of the men is slower than the others?

A. Yes, sir.

Q. So that it comes down practically to the same thing as efficiency, does it not?

A. Yes, sir. If one of the men is slower than the rest, it affects all of them.

Mr. EDWIN S. SMITH. That is all I have.

Q. (By Chairman MADDEN.) So your statement about harmony in here was apparently laying some sort of foundation of fact relating to the discharges in this case, was it not?

A. Well, it might have had some bearing on that; yes, sir.

Mr. KLEIN. Yes, there is no question about it. That is why it was called to your attention.

Q. (By Chairman MADDEN.) And that lack of harmony, and consequent stoppage of the work, as you say, of
157 course, might result from any one of a great variety of causes, might it not?

A. That is true.

Q. And if the work did stop, why, then, whether your counsel lets you call it interstate commerce or not, something serious would happen to your business in the way of goods flowing in and goods flowing out, would it not?

A. We certainly would not have them coming in; no, sir.

Chairman MADDEN. Has the Board any further questions?

Mr. CARMODY. I would like to ask two or three questions of Mr. Vosler.

Q. (By Mr. CARMODY.) You are not a lawyer?

A. No, sir.

Q. I am glad of that; I am not a lawyer, either. You are simply a manufacturer, are you not?

A. Yes, sir.

Q. You have had most of your experience in the field of manufacturing?

A. Yes, sir; in manufacturing plants.

Q. So have I. Now, if these lawyers will just let us alone for a couple of minutes, maybe we can get some information on this interstate commerce matter.

Mr. KLEIN. We are still governed by lawyers down in Washington, Mr. Carmody.

Mr. CARMODY. We cannot even get started, not even
158 you and I, without a lawyer interrupting us.

However, here is what I wanted to get at: You have a planning department of some 20 or 30 people in your factory, have you not?

A. Yes, sir.

Q. Now, will you tell the Board, what is the function of that planning department?

A. The function of that department is to supervise the inventory in there, and lay the work out, issue instructions to the various departments as to the operations that will take place on various materials, and the time when that has to be done; and in general, to route that stuff, or that material, through the plant.

Q. Do you have any time-study work in the plant?

A. No.

Q. No time-study work?

A. I say, no. There is a little time-study work, but it does not amount to very much.

Q. So these men in the planning department lay out the operations. Do they have, for instance, a job card, or an operation card?

A. Yes; they have that.

Q. They have?

A. Yes.

Q. They make that card out?

159 A. Yes.

Q. In other words, when a job comes into the planning department, as I understand it, the work is analyzed, and it is allocated to departments?

A. Yes, sir.

Q. And even down to machines, is it not?

A. Yes, sir.

Q. So that in the planning department, the planning group knows at any one time approximately the total number hours work yet to be done; is that correct?

A. I do not know whether they could analyze that or not.

Q. Well, do they have any idea of the load that is already in the factory?

A. I think they do; yes, sir.

Q. Yes.

A. I think so.

Q. So that if a rush order came through for a certain num-

ber of trailers, you can go to the planning department and ask somebody there how quickly delivery can be made of those particular trailers; is that correct?

A. Yes, sir.

Q. And they would say, "We can make delivery within a certain time, but that may mean that we may have to set aside other things",—is that not true? Is that not the way it is usually worked?

160 A. That is about it; yes, sir.

Q. Now, in order to do that, the planning department also has some knowledge of the stock on hand, of the various parts, has it not?

A. It is their job to keep the inventory.

Q. That is their job.

A. Yes.

Q. Yes. They will not send the job through the machines until they know definitely that they have got on hand all of the materials that are necessary for the operation, for the filling of the order; is that not correct?

A. That is what we expect.

Q. Yes. A good planning department must know that.

A. Yes.

Q. Now, the planning department not only knows what is in stock, but it also knows what is on order, does it not?

A. They get a copy——

Q. A copy?

A. From the purchasing department.

Q. A copy of all purchase orders.

A. Yes, sir.

Q. So that they know what is on order.

A. Yes, sir.

Q. So that they know approximately what deliveries are to be expected from the various vendors, or if they

161 do not know it, they can find it out, if there is a particular part, whether it be a casting, or a forging, or some other part, is necessary to expedite a certain job.

A. Yes, sir.

Q. Now, you see, the point that I am making here, or that I am trying to make, is this: I am trying to analyze this in my own mind, and I am trying to see whether or not, in the actual day-to-day operations of this manufacturing establishment, you are not yourselves constantly affecting commerce. You are constantly in touch with the flow of materials necessary to speed up your production, or to slow it down, if you have a desire to slow it down?

In other words, the vendors, as I see it, do not ship on a hit-or-miss basis, but all of the vendors ship to you on the basis of some schedule that you have given them.

A. They ship on our schedule.
Q. On your schedule.
A. That is right.
Q. You make the schedule.
A. Yes.
Q. And the buyer of raw materials makes the schedules on which the vendors, wherever they may be, in whatever States they may be, make their manufacturing schedules, does he not?
A. Yes, sir.

Q. All right. Now, the amount of work that is
162 available to your working force depends pretty well on your volume, does it not, on the volume of business that you have?

A. I am sorry, Mr. Carmody; I do not know that I just understand the question.
Q. I say, the amount of work that is available to your workers depends on the volume of work that you have.
A. Yes.
Q. The volume of sales.
A. Yes, sir.
Q. When your sales increase, when the demand increases for your company's product, then you may have to expand the hours, or put on a night turn, or add more people?
A. Yes, sir.
Q. All right; now let us assume that you start off in the month of June with X sales; let us say, 2,000 trailers, for example. I do not recollect the total number of man-hours involved in the controversy; I have not gotten that far along; but let us assume it is 2,000. Then your purchases from your vendors, all of your vendors, are based on a 2,000-trailer schedule, are they not?
A. Yes.
Q. Now, assume a great increase in demand, which would mean that you would have to deliver in July, 4,000 trailers of the same type. Then is it not true that your orders for material going out to the vendors, whether it be for
163 sheet steel, or axles, for malleable castings, or what-not, would jump up from a 2,000-trailer basis to a 4,000-trailer basis?
A. Yes; I think that would apply anywhere.
Q. Yes.
A. Surely.
Q. Anywhere.
A. Yes.
Q. Now, at the same time you would be either increasing your number of employees that you have in the factory, or extending the hours, or increasing the efficiency to an

unusual extent, in order to get out the 4,000 trailers in the same time that you had gotten out the 2,000 trailers in June, would you not?

A. We would have to do a lot, to do that.

Q. You would have to do a lot.

A. Yes, sir.

Q. Yes. Now, is it not true, and do you not admit it is true, that the vendors would have to do the same thing, take the same action? They, too, would have to increase their speed of operation, or extend their hours, or increase the efficiency of their people, or increase the number of people doing the job. Let us take brake material, or let us take channels, for instance, or take anything you want.

A. Not as to sheet steel; no, sir. I do not believe that it would make any difference to the American Rolling Mills whether we bought a pound in a month, or not. They
164 probably would not change their operations any.

Q. I wonder if the American Rolling Mills would answer that question in the same manner? They are very much concerned, of course, to see to it that everybody buys the same amount of steel this month that they bought last month, because if they do not, then they have either got to sell it in some other market, or they have to lay off some of their people, or curtail their operations for that month. I have been through their plant several times down there, and I assume that is true of those plants.

A. Well, I do not know.

Q. Well, now, so much for the material proposition. Now, there is another thing that I am very much interested in. I had it in mind when I was looking at your figures this morning as to your plant layout, and so forth. You have a considerable amount of what might be called precision equipment, have you not?

A. Yes, sir.

Q. You say that your operations are involved and intricate. I assume that you have grinders, and you have not only grinders, but other precision tools.

A. Yes, sir.

Q. Now, to what extent are those precision tools made in the State of Michigan?

A. Well, I do not know. We make certain tools in
165 our own tool room, and certain other tools we secure.

Q. Now, let us take the Bullard machine that you spoke of.

A. Oh, I see what you mean.

Q. I am talking about the big tools.

A. I see.

Q. Not the small ones; not the dies.

A. I see.

Q. Not the tools that the die maker makes. I am talking about the big machine tools.

A. I see.

Q. Take the Bullard, for instance, which is a highly specialized and highly efficient piece of mechanism, is it not?

A. [Witness shakes head "Yes."]

Mr. PATTERSON. Speak up please, Mr. Vosler, so the stenographer can get it.

The WITNESS. Yes. I was just listening to the question.

Q. (By Mr. CARMODY.) You are familiar with the Bullard, are you not?

A. Yes, sir.

Q. You have mentioned it in your statement.

A. Yes, sir.

Q. Where is that made?

A. Oh, I imagine that is made in Cincinnati; I think it is made at Cincinnati.

Q. In Connecticut, is it not?

166 A. Well, I do not know.

Q. I think the Bullard is made in Connecticut. Now, then, the grinders that you have: Are they made here in Detroit?

A. I do not think so.

Q. They, too, are made in one or more of the machine tool centers, like Cincinnati?

A. Yes, sir.

Q. Or Connecticut?

A. Yes, sir.

Q. Or Rockford, Illinois?

A. Yes, sir. They come from somewhere.

Q. Yes?

A. I do not recall.

Q. In other words, this is not a self-contained institution, but the very tools that are used to make the product are imported, and they are the product of the training, skill, and experience of course of the mechanical engineering profession of the United States, and of the other parts of the world; and they are manufactured in the larger centers, such as Cincinnati, and such as Worcester, Massachusetts, and such as Rockford, Illinois, and brought in here, and incorporated into a factory that takes the raw materials that come from all over the United States, or at least from various parts of the United States, and processes them here, and puts them immediately into commerce.

167 That is the system, is it not?

A. Well——

Q. Is that not how it is?

A. There is usually a little lull after it comes through your machines, until it goes out into commerce.

Q. Yes, usually.

A. Yes.

Q. But not always?

A. Well, usually, with us.

Q. Is it not true in your case—not usually, perhaps, but is it not true that some times in your case you take materials that come in from a vendor, and put them promptly into processing?

A. Yes.

Q. In order to continue an assembly or to complete an assembly that might have been started?

A. That happens.

Q. That happens?

A. But in rare cases.

Q. As a matter of fact is that not one of the things that you have a planning department for, to keep down your inventory, to keep a balance between what you have in your inventory, and the load that you can put on your various machine tools? Is that not what a planning department is for?

A. Yes, sir.

168 Q. The planning department, in the operations of any manufacturer, is just as important as any machine tool that you have, is it not? It is the product of the effort and the brain of Frederick Taylor, which came fiirst into the machine tool industry, and has spread from that into practically all of the other industries, and is now general practice in the automotive industry, in the automotive field, where they have perhaps utilized experience and science more intelligently than they have anywhere else, in any other field.

A. (No answer.)

Mr. CARMODY. Well, now, I want to ask just one or two more questions——

Mr. KLEIN. Are you testifying now, Mr. Carmody? The witness is not answering your questions.

Mr. CARMODY. I am asking them, and he is answering.

Mr. KLEIN. I do not think so. You have been simply stating a number of different propositions to him.

Mr. CARMODY. I asked him whether it is not true that the planning department is a very important part of any manufacturer's operations.

Mr. KLEIN. Sometimes.

The WITNESS. I answered that.

Mr. CARMODY. Yes; I thought so.

The WITNESS. However, you then went into quite a lot of engineering propositions, that I am not prepared to
169 answer you on.

Mr. CARMODY. I see.

The WITNESS. I just wanted to make that observation.

Mr. CARMODY. Well, we will discuss that presently, perhaps, when the lawyers are not around, off the record.

However, there is just one more thing here.

I noted that in your testimony you referred to these men as semiskilled. For instance, you talked about a riveting gang. You call all of those men semiskilled; is that true?

A. That is the way we regard them.

Q. Is that so?

A. Yes.

Q. Well, now, is there not such a thing as a skilled heater, for instance?

A. No, sir; I do not think so.

Q. Well, I used to heat rivets, and I had the idea that an unskilled man could burn a lot of rivets; could burn more rivets than you could pay for all day long. Is not a riveter a skilled mechanic?

A. We have not regarded him as such.

Q. Is that so? Well, that is all right. I am just asking for your opinion.

Now, I had just one more question here. I want to ask about this matter of harmonious relationship. Mr. Smith has already asked you about that, and I think per-
170 haps you have answered that; but I am not quite sure that I understand how that happens to come into this brief, this question of harmonious relationship in these gangs. Having worked in the shop a good many years, and having worked on riveting jobs, and having done some riveting and some rivet heating myself, I have seen a lot of gangs that were not very harmonious, but they could turn out a terrific amount of work.

I mean, they would not be harmonious all the time. In fact, one of the most efficient riveting gangs that I ever saw had in it a riveter whom nobody in the gang liked, but they all worked with him, and for him, all night long, for 12 straight hours, for a long, long time.

Mr. KLEIN. Are you testifying now?

Mr. CARMODY. (Continuing.) There was not any harmony in that gang, but there was efficiency in that gang. Now, I am just wondering what kind of harmony you have got to have in a gang. Do they have to like each other; do they have to belong to the same church; do they have to belong to the same lodge; or what do they have to do, in order to be efficient as a gang?

A. Well, it is just a matter of working along together.
Q. Yes.
A. Following a certain pace.
Q. Yes.
A. Some of those things that you have mentioned
171 certainly are not essential.
Q. Well——
A. (Continuing.) Men do not have to live together, in order to be able to work together.
Q. Of course in large cities like this, frequently men may never see one another outside of the shop; they come to work in the morning and they work together all day, and they disperse at night, and go to different parts of the city and never see one another outside of the shop. But they can work very harmoniously together, and some times perhaps more harmoniously than if they were related, or in closer contact.
A. That is probably true.
Mr. KLEIN. If they quarrel, of course—you do not deny that they will not get along harmoniously if they are arguing between themselves, do you?
Mr. CARMODY. I just wanted to get some information as to what he meant by his reference to harmony there.
Mr. KLEIN. I think that is a factor also. If workmen working side by side are constantly quarreling, of course they are not going to make as good progress in their work.
Mr. CARMODY. I am through.
Q. (By Mr. KLEIN.) Is that not true, Mr. Vosler?
A. Yes, that is true.
Chairman MADDEN. Does he have now the exhibits that he had a while ago?
172 The WITNESS. This is the one that Mr. Carmody handed me.
Mr. KLEIN. I have exhibit 1 here. I will leave this copy with the Board. We are going to list the photographs, and give them to the stenographer, so he can insert them.
Chairman MADDEN. I just wanted to know what was going to be done, was all.
Mr. KLEIN. Oh, yes.
Mr. PATTERSON. Is counsel through?
Mr. KLEIN. Yes, I am through with this witness. Now, I would like to make a presentation——
Mr. PATTERSON. I mean, are you through with the witness?
Mr. KLEIN. Yes.
Mr. PATTERSON. I would like to ask a few more questions.
Q. (By Mr. PATTERSON.) Mr. Vosler, on the average how many cars of freight, how many cars of raw materials, of whatever kind, lumber or sheet steel, or what-not, come into

the Fruehauf Trailer Company plant per week, on an average?

A. I do not know. We buy lumber in cars, and that is about the only commodity that we get in any quantity, that comes by rail.

Q. How is your sheet steel shipped; is that by motor truck?

A. Almost all by motor truck; yes, sir.

Q. Well, how many truck loads of raw material do you get in per week on an average?

A. I do not know.

173 Q. Well, is it not a fact, Mr. Vosler, that there is more or less of a constant flow of one item or another into your plant?

A. There is material coming in there——

Q. That is what I mean.

A. Every day, yes.

Q. Every day there are axles, or sheet iron, or sheet steel or brake appliances or electrical equipment, or tires, or what-not, moving into your plant; is that not true?

A. There is something coming in there every day; yes, sir.

Q. Yes. And is it not also true that every day something is moving out of your plant to various parts of the country?

A. Yes.

Q. Yes. Now, following up just one step further, the inquiry of the chairman: Certainly any industrial strife in your plant, your company being the largest in the field, would more substantially affect the flow of commerce than it would in a small plant, would it not?

Mr. KLEIN. Just a moment; I object to the use of the words "flow of commerce." They do more business, or sell more materials, according to their size—if that is what you mean.

Chairman MADDEN. Let us talk for the time being about the factual flow of commerce.

Mr. KLEIN. I think it should be clear for the witness

174 what is meant. If they mean more factory operations, yes. The larger the factory the larger the operations.

Mr. PATTERSON. Is that your answer, Mr. Vosler?

The WITNESS. I think that would be the case.

Q. (By Mr. PATTERSON.) Do you have any idea what percentage of your trailer sales are to customers outside of the State of Michigan?

A. Oh, I should say it probably would be 80 percent, at least. Maybe more.

Q. 80 percent or more?

A. Yes, sir.

Mr. PATTERSON. I think that is all with this witness.

Q. (By Chairman MADDEN.) We were speaking, when Mr. Carmody and you were having a colloquy a little while ago, about lawyers. It looks on the face of it that if your lawyer had a good deal to do with the preparation of this statement——

A. We worked together with it.

Q. There are some things in it which it would seem to me would not be significant to you as a layman; I mean, that they would seem to be only legally significant.

For instance, on page 9——

Chairman MADDEN. I wonder if you would furnish the witness with a copy?

Mr. PATTERSON. Here is one.

Mr. CARMODY. No; here is one. That is all right.

175 (Mr. Carmody hands document to the witness.)

Q. (By Chairman MADDEN.) (Continuing.) The paragraph which begins in the middle of the page, "The materials come to a complete stop at our factory in Detroit." Now, of course, the limited train comes to a complete stop at stations along the way; does it not?

A. Yes, sir.

Q. And the limited train resumes its journey shortly thereafter, and these materials which come into your factory do go out again; do they not?

A. Yes; they do in the form of a finished trailer. They don't go out as they came in, however.

Q. Someone, either you or your lawyer, apparently regarded that as an important fact on page 1. And at other places in the statement you speak of the fact that they come in one form, namely, in the form of raw or semifinished materials, and that they go out in the form of finished materials, or perhaps complete trailers.

What does that have to do with it, anyway? I mean that if there is—the reason I ask you is because it is in your statement and I suspect that you probably are not competent to answer because it seems to me that what you have there is just a legal term.

What do you say about it?

Mr. KLEIN. I don't think that is a proper sugges-

176 tion, if the Board please. We are here determining the question——

Chairman MADDEN. Well——

Mr. KLEIN. Of what constitutes commerce, and the Supreme Court of this country has——

Chairman MADDEN. I am asking a lay witness whether or not—I am asking a lay witness here whether it seems to him to make any difference that these goods come in in one form and go out in another.

Mr. KLEIN. Will, that is a——

Chairman MADDEN. Don't you think there is some significance in the question of whether the law as you claim it to be, and which the courts may hold it to be, is consistent with the facts in the way sensible people, such as the witness, look at things?

Mr. KLEIN. I think the Supreme Court of the United States is quite sensible and they consider it a very vital question to determine whether or not when materials come in as they come to a stop at a factory, and they are fashioned and changed and come out in a different, a completely different form, and they as a court consider it important, and, therefore, in making this statement, I asked Mr. Vosler to state the facts whether or not these materials were transformed by this operation, so that if it ever does become vital they would know the facts.

Chairman MADDEN. I understood perfectly well——

177 Mr. KLEIN. Yes.

Chairman MADDEN. That you thought that the thought was vital.

Mr. KLEIN. Yes.

Chairman MADDEN. And, therefore, you had the witness state the fact with reference to it.

Mr. KLEIN. Exactly.

Chairman MADDEN. Now, I should like to have a statement from the witness as an intelligent layman and a man interested in this concern, whether he sees the vitality in the contention. You see it. I should like to know whether he sees it.

Mr. KLEIN. I think that is an incompetent question.

Mr. PATTERSON. It is his testimony.

Mr. KLEIN. That is true. He has testified and he says they change the form.

Mr. PATTERSON. Why didn't you put the quotation marks around the Supreme Court's language?

Mr. KLEIN. We should have, because they are the ones to determine it.

Chairman MADDEN. If I may, I should like to ask this witness whether he sees why there should be a legal distinction between a situation of where the goods come in in one form and go out in that same form and where they come in in one form and go out in another form. Do you?

178 The WITNESS. There certainly is a distinction between a piece of sheet steel that comes in there that is 12 feet one way and 8 feet another way, and a finished stamping that is made from it.

Chairman MADDEN. There is no question about that. I think all of us, even the lawyers, would recognize that there

is a factual difference there. Of course the ultimate question is going to be whether there is a legal difference.

Mr. CARMODY. Now, let us ask this question. Let us ask this question of the witness.

Q. (By Mr. CARMODY.) Taking your own statement here, supported by what your counsel says is the Supreme Court's final word on the matter, would you say that some of the materials that come into your factory go out changed in form and some of them go out unchanged in form?

A. I admitted that we bought rubber tires that are completely manufactured.

Q. Well, would you think, then, that rubber tires are in commerce on these trailers and the rest of them are not?

Mr. KLEIN. Well, they are an assembled product. They don't go out and buy tires, bring them in, and roll them out. They put them through an assembly operation. That is the difference.

Mr. CARMODY. Of course, as a layman interested in these things, and concerned now by an obligation under the statute to bring about some reasonable understanding of labor relations in connection with some of these matters, I am hoping the time may come when even the courts may take a more realistic view of what is commerce. I cannot do more than ask that this be done, you see, which is all that you as an attorney or any other counsel can ask be done.

179

Mr. KLEIN. You are advocating that very well, sir.

Mr. CARMODY. Well, I am hoping that common sense and realism will play a part in the ultimate determination of what is, in fact, under a modern technology something different than what it was 200 years ago, do you see?

Mr. KLEIN. Well, governmental principles are the same, and the courts recognize them as the same.

Mr. CARMODY. That is right. That is right. If in fact part of this material comes into the plant and goes out unchanged and that is commerce, and then part of it comes in and is changed and is not commerce, what sort of confused thinking have we? I ask the witness.

Mr. KLEIN. The Supreme Court has expressed itself, if you gentlemen would care to be enlightened by the Supreme Court, or follow their ruling. I think they have given us a guide as to what is considered interstate commerce, subject to regulation, and what is not, and they have declared many times that a manufacturing operation of this character is not interstate commerce and that the relationship of employee to employer is not interstate commerce, even though he were working in interstate commerce, and they have so held.

180

Chairman MADDEN. Well, Mr. Klein, we will get to that argument, I hope, in just a moment.

Mr. KLEIN. Yes.

Q. (By Chairman MADDEN.) On page 19 of your statement, Mr. Vosler——

Mr. PATTERSON. Mr. Chairman, I wonder whether or not the witness would answer the question that Mr. Carmody asked him?

Chairman MADDEN. The last one?

Mr. CARMODY. Yes. I would like to know what he thinks about that.

Mr. PATTERSON. He was interrupted by the speech of his counsel.

Mr. KLEIN. I think it is all argumentative and calls for legal conclusions. You have the facts as to what they do there.

Now, what your legal conclusion may be as to what they do is not a fact, that is an observation as to what the legal result is.

Mr. PATTERSON. Well, it strikes me, Mr. Klein, that Mr. Carmody's construction of what might be commerce or not might be just as persuasive to the court as your opinion.

Mr. KLEIN. Exactly.

181 Mr. PATTERSON. Then, let us have an answer.

Mr. KLEIN. But the witness cannot answer in the form of a conclusion. That would be incompetent.

Chairman MADDEN. Just sit down, Mr. Klein.

(To the witness.) Can you answer Mr. Carmody's question, Mr. Vosler?

The WITNESS. No; I can't answer that.

Q. (By Chairman MADDEN.) On page 19, you have this statement: It begins at the first line:

> Their work is to change the raw and unfinished materials from a rough state, through an involved and complicated manufacturing process into a different and completed product. Their work is completed before any sale or any shipment is made and has no direct relationship thereto.

Now, of course, "direct" again is a question of degree, isn't it, or form of distinction as indicated, that there won't be any sale or shipment unless these men do do their work, and yet you say here, or your lawyer has you say:

> Their work is completed before any sale or any shipment is made and has no direct relationship thereto.

Obviously it does have a relationship, and an important relationship, does it not?

Now, whether the word "direct" is the right word to describe that relationship or not, is apparently some sort of a technical definition, the use of the word "direct" isn't it?

182 A. Well, I don't know. You are getting down to the technical phraseology now.

Q. Well, the word, of course, is a very common word, the word "direct", but I can see that the question of whether this man makes any trailers today has no direct relationship to the question of whether any trailers will be sold or shipped today, and it seems to me that I might say of you that you were putting some sort of an obscure meaning upon the word "direct."

A. Well, our sales and our manufacturing are entirely separated. That is why one does not have a direct bearing upon the other, as I see it.

Q. They are so separated that if you did no manufacturing you wouldn't make any sales?

A. That is right.

Q. And so they have nothing to do with each other?

A. Well, our manufacturing must come first, and when we manufacture something then we must sell it.

Q. (By Mr. CARMODY.) Now, wait a minute. Don't you manufacture under a customer's order sometimes? Don't you get an order sometimes to manufacture something and then manufacture it?

A. Yes.

Q. Well, then, your statement is not true, your previous statement?

A. Well, that is——

183 Q. Maybe you did not quite understand it, but it does not tell the whole story, that is what I want to say. I am sorry. I mean it does not tell the whole story because, as a matter of fact, I take it from your earlier testimony that you actually do get the special orders and then manufacture, and sometimes you even have to do some special designing to meet these orders; is that true?

A. Let me make myself clear. I assume a sale is not complete until it is delivered and paid for.

Mr. CARMODY. Oh, I see.

The WITNESS. Now, an order may be taken, but that order may be cancelled.

Q. (By Mr. PATTERSON.) Mr. Vosler, isn't it true that when there is a slumping off of sales in your business, that you curtail the manufacturing operation?

A. Yes, sir.

Q. Well, then, the manufacturing operation is not separate and distinct from sales, is it?

A. Why, yes.

Q. Well, why don't you continue the same number of men, then, manufacturing trailers irrespective of the number of trailers you sell?

A. We may do that over a period of time until—we may decide to build up a stock of trailers over a thirty or sixty day period, even though sales are falling off.

Q. Right at this time you have more men working
184 for the Fruehauf Trailer Company than you have had over how long a period?

A. I think we have had more than we have right now.

Q. When?

A. Oh, within the past year.

Q. Within the past year?

A. Yes.

Q. When was your peak production of this year?

A. Either last month or the month before.

Q. Either September or October?

A. Yes.

Q. And in September or October, you had more employees working than you had had in that plant for how long?

A. I don't know.

Q. A couple of years?

A. Oh, no, I don't think so. I think we have had—I think we had more than we have had at other times this year.

Q. Well, in August and September you were employing more men than you are now; is that right?

Mr. KLEIN. He said September and October.

Mr. PATTERSON. Excuse me.

The WITNESS. I think that——

Q. (By Mr. PATTERSON.) In September and October you were employing more men than you are now?

A. I couldn't say definitely. I think perhaps we were in September.

185 Q. In the manufacture of trailers and accessories?

A. Yes, sir.

Q. Right?

A. Yes, sir.

Q. And were you also employing more men in September and October than you were in August?

A. I think so.

Q. Why? Wasn't it because you had more orders in September and October?

A. Perhaps it was that.

Q. Yes?

A. Perhaps it was something else.

Q. Certainly. So that to the extent of the number of trailers that you are selling, it has a direct relationship to the production end of the business, does it not?

A. Well, naturally, we don't work men in our plant unless we have work for them to do.

Q. That is right. That is right. Unless you sell the trailers that are built you don't build any more?

A. That is right.

Q. Yes. Now, in your statement here, to which the chairman referred a few minutes ago, you stated, "Their work is to change the raw and unfinished materials from a rough state through an involved and complicated manufacturing process."

What do you mean by "complicated manufacturing
186 process", Mr. Vosler?

A. Well, when a casting comes in there or a rough forging comes in there and it has to be handled on two, three, four, or five machines by different men in various operations, it begins to become a complicated process in my opinion.

Q. And in what respect is an "involved process"—that is the word you used—different from a complicated process?

A. Well, I don't know how to answer that.

Q. Well, just where did you get that phraseology?

A. I admitted that I had worked with our counsel on this. I didn't——

Q. Well, that isn't your language, then, at all, "through an involved and complicated manufacturing process", is it?

A. Well, as far as the word "complicated" is concerned, that is the case as I see it.

Q. Well, will you please answer the question, Mr. Vosler? This phrase "through an involved and complicated manufacturing process", that wasn't your language at all, was it?

A. I don't think I used that word.

Chairman MADDEN. The witness has said that he worked with his counsel. I don't see what you are getting at.

Mr. KLEIN. I am sure I don't.

Mr. PATTERSON. I am sure you do, Mr. Klein.

Mr. KLEIN. No; I am sure I don't.

Chairman MADDEN. I was hoping you would get
187 through right away, because I want to get through with this witness and listen to your argument on your motion immediately after recess.

Mr. KLEIN. Yes, sir.

Mr. PATTERSON. Very well. There are just one or two other questions I want to ask.

Q. (By Mr. PATTERSON.) Mr. Vosler, I think you stated that all of the rims that are utilized on Fruehauf Trailers are bought from the Firestone Steel Products Company?

A. No. I said that most of them came from there, and as far as I know they all come from Ohio.

Q. Now, on those rims; the Fruehauf Trailer Company does nothing, do they, except attach a tire?

A. Assemble the tire and adjust the tire and the rim on the wheel.

Q. On the wheel, but the rim is itself a completed thing, isn't it?

A. As far as any operations on it, such as welding or machining it; yes.

Q. That is what I mean. So that ordinarily how many rims are used on each trailer?

A. Four.

Q. Four rims.

A. With a spare sometimes.

Q. And sometimes more than four?

A. That is right, if the trailer has more than four wheels.

188 Q. So that as far as the rim and tire is concerned, those rims and tires come in and there is no complicated or involved process done on them, and they go out in the same form that they come in, don't they?

A. They go out in the form of a completed trailer. We have hundreds of rims in our warehouse. We carry a huge stock of rims there. We don't ever use a rim that comes in today on a trailer that is made today, at least that would be very unusual.

Q. (By Mr. CARMODY.) At this point I would like to ask: I take it when they are knocked down—they are not assembled and then knocked down and shipped? You make a knock-down shipment; you don't first assemble them and then disassemble them?

Mr. KLEIN. That is what they do.

Q. (By Mr. CARMODY.) Do you disassemble the tires?

A. Yes; we do that, because we road-test each one.

Mr. KLEIN. They complete the whole manufacture, a finished job ready to go out in Detroit or any place they may go to, and then they disassemble it here.

Mr. EDWIN S. SMITH. Just one more question, and I won't bother you any more.

Q. (By Mr. EDWIN S. SMITH.) Several times in response to questions from the Board, Mr. Vosler, you replied that a particular trailer that he was pointing out in a photograph or describing, was made at the factory in whole or in

189 part. I bring this up because you have said it several times.

A. Yes.

Q. You don't intend to convey to the Board that in general trailers going out from your factory are not almost completely of your manufacture, do you?

A. Well, many times we don't build the bodies for the trailer, Mr. Smith, and these pictures you showed me were

all trailers with bodies, and I can't tell whether we made those bodies or whether somebody else made them.

Q. But that would be the chief distinction?

A. Yes, sir.

Mr. EDWIN S. SMITH. That is all.

Chairman MADDEN. We will recess for five minutes.

(Whereupon a short recess was taken, after which the proceedings were resumed, as follows:)

Mr. KLEIN. I assume I will be given an opportunity to present that argument. I will be very brief—on all phases of the motion.

I have not had that opportunity yet. I did not know what procedure was going to be followed here. Customarily in our court procedure here, that precedes the case. I will try to be very brief on it but I think I should be given an opportunity to briefly discuss these constitutional points.

Mr. PATTERSON. Just a minute. May it please the Board, I have a couple of witnesses here that I want to put
190 on on that interstate commerce feature of the case, before Mr. Klein continues with his argument. After all, there may be two sides to the question of interstate commerce, although I know Mr. Klein would like to confine it to his side of it.

Mr. KLEIN. I understood there was only one witness, Mr. Patterson, without your sarcasm. I did not know you had other witnesses. I will be perfectly happy to examine the witnesses you have, as far as that is concerned.

Mr. PATTERSON. Fine.

Chairman MADDEN. Will that close your case, as far as that is concerned?

Mr. PATTERSON. It will, Mr. Madden. I have two witnesses. Mr. Tolbert, will you come up here? It may be that we can stipulate the facts that Mr. Tolbert will testify to, and save time. I don't know.

Mr. KLEIN. All right.

(Conference between counsel out of the hearing of the Board.)

Mr. PATTERSON. Will you raise your right hand and be sworn?

Chairman MADDEN. Give your name to the reporter.

Mr. TOLBERT. Mr. James Tolbert.

JAMES TOLBERT, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

191 Q. (By Mr. PATTERSON.) What is your full name?

A. James Tolbert.

Q. And by whom are you employed, Mr. Tolbert?

A. The Central Inspection & Weighing Bureau.

Q. And you are here in obedience to a subpoena of the Board?

A. I am.

Q. Now, does the Central Inspection & Weighing Bureau have a record of some of the carloadings of freight shipped by the Fruehauf Trailer Company?

A. They do.

Q. Do you have a record of shipments made by freight to points outside of the State of Michigan, which were made by the Fruehauf Trailer Company since January 1st of this year?

A. Yes, sir.

Q. How many cars did they so ship?

A. Our record only covers those shipments which the Fruehauf Trailer Company elected to ship under a weight agreement.

Q. What do you mean by that, Mr. Tolbert?

A. That is an agreement entered into by the shipper and the Central Freight Association through its inspection bureau whereby the railroad accepts the shipper's weight, and does away with the necessity of weighing the cars.

Q. Of weighing each separate car?

192 A. Of weighing each separate car.

Q. So that your office would not have a record of all of the shipments by freight which the Fruehauf Company might have made?

A. No, sir.

Q. Only those shipments which are covered by a weight agreement?

A. That is right.

Q. I see. Now, how many cars of freight did the Fruehauf Company ship to points outside the State since January 1st?

A. Under the weight agreement they had 112 carloads.

Q. 112 carloads?

A. 112 carloads.

Q. (By Mr. CARMODY.) Up to what period?

A. That would be up to November 1st.

Q. Inclusive?

A. Inclusive.

Mr. PATTERSON. That is all.

Mr. KLEIN. No questions.

(The witness was excused.)

Mr. PATTERSON. Mike Palazolla. Will you raise your right hand and be sworn?

Chairman MADDEN. Give your name to the reporter.

The WITNESS. Mike Palazolla.

193 MIKE PALAZOLLA, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) Your full name is Mike Palazolla, is it?

A. Yes, sir.

Q. And in what business are you engaged, Mr. Palazolla?

A. In the trucking business.

Q. And in connection with that business do you do considerable hauling for the Fruehauf Trailer Company?

A. Yes, sir.

Q. In the shipment of merchandise for the Fruehauf Trailer Company, what do you ship for them?

A. Trailers.

Q. Do you haul any accessories for them or parts of trailers?

A. Parts that belong to the trailer.

Q. Yes; what parts have you hauled besides the completed trailer?

A. Fifth wheels, light plugs, and wrenches that belong with the trailer.

Q. Yes; well, do you make shipments of just the accessories alone without the trailer?

A. No, sir.

Q. All that you haul for them are the completed trailers?

194 A. Yes, sir.

Q. With the fifth wheel that goes with that particular trailer?

A. Sometimes.

Q. Sometimes. Now, what is the fact as to whether you make a considerable number of shipments for Fruehauf outside of the State of Michigan?

A. I don't get the question right.

Q. Do you haul any freight for them to cities other than in the State of Michigan?

A. Not freight—trailers.

Q. Well, trailers?

A. Yes.

Q. Yes. Do you know about what portion of the Fruehauf Trailer Company business is transported by motor truck as distinguished from rail?

A. Oh, I should judge about——

Q. (By Mr. KLEIN.) Do you know of your own knowledge; do you know how much was shipped by rail or by truck?

A. No, I don't. I just know my part.

Q. (By Mr. PATTERSON.) Well, do you have a record of the shipments of trailers that you have made for the Fruehauf Trailer Company since the first of this year?

A. Yes, sir.

Q. Do you have those shipments separated into
195 interstate and intrastate shipments?

A. No, sir.

Q. Well, then, how many of the shipments that you made were to cities in the State of Michigan, or were most of them outside of the State?

A. I really don't know. The records are there [indicating].

Q. Well, do you know how many trailers you shipped for them since the first of the year?

A. I haven't counted them.

Q. These are the records of the shipments which you made since the first of the year? (Producing documents.)

A. Yes, sir.

Mr. PATTERSON. I hate to go through all these.

Mr. KLEIN. I do too. The more there are the better we like it. I mean, the more shipments there are the more sales there are and the more men we employ.

Mr. PATTERSON. Well, maybe you can get it approximately and then calculate——

Chairman MADDEN. What are those different folders, months, cities, or what?

The WITNESS. Those are months.

Q. (By Mr. PATTERSON.) Those are shipments made in each particular month?

A. Yes.

Q. Can't you estimate, Mr. Palazolla, how many
196 shipments you made per month for the Fruehauf Company?

A. Oh, I should judge from 50 to 70.

Q. 50 to 70 shipments per month?

A. Complete trailers; yes.

Q. And what percentage of those trailers are shipped outside of the State of Michigan?

A. I would not know. That is the only way I would know, is to go through those records.

Q. Well, do you have many shipments in the State of Michigan, Mr. Palazolla?

A. Yes.

Q. You do have quite a number?

A. Yes.

Q. Well, then, with some 50 to 70 in a period of nine months you have shipped five or six hundred trailers, have you not?

A. I guess those are the figures.

Mr. PATTERSON. Can we stipulate?

Mr. KLEIN. Oh, there is no dispute about that.

Mr. PATTERSON. Can we stipulate how many you ship outside of the State?

Mr. KLEIN. Well, Mr. Vosler guesses that 80 percent of their sales are outside of the State of Michigan. He testified to that.

Mr. PATTERSON. Well, suppose we stipulate that 80 percent or more of the shipments carried by Mr. Palazolla
197 were to points outside the State of Michigan.

Mr. KLEIN. We do not question that.

Mr. PATTERSON. That is all.

Cross examination:

Q. (By Mr. KLEIN.) By hauling it do you mean you carry it or pull the trailer?

A. I pull the trailer with my tractor.

Q. You have a tractor?

A. Yes, sir.

Q. So then you attach a fifth wheel and couple it up, do you?

A. Yes, sir.

Q. To pull the new trailer?

A. Yes, sir.

Q. And then deliver it, and when you deliver you haul your tractor back alone, or, that is, your men do?

A. Yes, sir.

Mr. KLEIN. That is all.

Mr. PATTERSON. Let me ask this one thing:

Redirect examination:

Q. (By Mr. PATTERSON.) Could you give the Board a list, out of your memory, of ten to fifteen points to which you have transported trailers in the last eight or nine months?

A. I can give some.

Q. All right; go ahead.

198 A. Well, there is Grand Rapids; there is Saginaw; Akron; Cleveland; Wooster; Muncie——

Q. Worcester, Massachusetts?

A. No; Wooster, Ohio; Muncie, Indiana; Indianapolis; Chicago; Buffalo; Milwaukee; Erie, Pennsylvania—all within a distance of say, around 400 miles of Detroit.

Mr. PATTERSON. That is all. Thank you.

Recross-examination:

Q. (By Mr. KLEIN.) These are your own trucks that you drive and it is your own company, isn't it?

A. Yes, sir.

Mr. KLEIN. That is all.

Q. (By Mr. CARMODY.) You are here on subpoena?

A. Yes, sir.

Mr. CARMODY. I see.

Mr. PATTERSON. That is all, Mr. Palazolla.

(The witness was excused.)

Mr. KLEIN. Are you all through now, Mr. Patterson?

Mr. PATTERSON. The complainant has no further evidence on interstate commerce.

Mr. KLEIN. Well, I was asking if the Board would afford me the opportunity not only to discuss the interstate commerce question, but some of the other questions that are raised? I will be brief as I can on it.

Chairman MADDEN. You may discuss all the points
199 you have in your notes.

Mr. KLEIN. Yes.

If it please this Board, in our motion to dismiss, which was again renewed at the outset of this hearing, there are five or six definite constitutional grounds wherein we have submitted that this Board is without jurisdiction, and that the Wagner Act, so-called, under which this Board has acted, is contrary as applied to the Fruehauf Trailer Company to the various provisions of the Constitution of the United States, which we have set forth particularly in our motion.

The first question before this Board is whether or not the manufacturing operations in which the seven employees of the Fruehauf Trailer Company, who are involved in these proceedings, were employed—whether that operation is an operation involving interstate commerce, or whether it directly or substantially affects interstate commerce within the construction placed upon the commerce clause by the Supreme Court of the United States, which is the final word on constitutional construction.

Under the Interstate Commerce question there is also the objection raised in the motion that the relationship between these employees and the Fruehauf Trailer Company, their employer, is not one which of itself constitutes interstate commerce or directly or substantially affects interstate commerce. That relationship is not an element of
200 interstate commerce within the construction placed upon it by the Supreme Court.

As we all know, perhaps more as lawyers than as engineers, as Mr. Carmody would say, we have a Federal Government that is one that operates under granted powers only. In other words, all of the powers not expressly and specifically granted to the Federal Government are reserved unto each of the States to pass upon for themselves in ac-

cordance with their problems and views as required by their own specific locality.

And only such powers as are enumerated specifically in the Constitution are within the right of the Federal Government to act upon.

Congress has only such powers as are expressly delegated to it. If this Board——

Chairman MADDEN. I hope that I shall not interrupt too much, but there, of course, you are not quoting the language of the Xth Amendment when you say that Congress has no power except what is expressly and specifically granted. Why, you are speaking right into the teeth of Chief Justice Marshall, are you not?

Mr. KLEIN. Well; I did not mean to draw too close differentiations for this point. I was just trying in a general way to outline it.

Chairman MADDEN. Because his great jural reputation was really made by following a doctrine that was the opposite of that, was it not?

201 Mr. KLEIN. I wouldn't think so.

Now; if you wish, we can go into all these various little differentiations. I was trying in a general way to state what I understand the Supreme Court's rule to be as to the powers of Congress: That they can act only on such powers as are delegated to them under the Constitution.

Chairman MADDEN. Of course, the text from which you might well treat that sermon would be the text of the Xth Amendment, "All powers not herein granted."

Mr. KLEIN. That is one of them.

Chairman MADDEN. And it does not say "Specifically and expressly", does it?

Mr. KLEIN. I think that goes to judicial construction. I am adding the judicial construction to that.

Chairman MADDEN. Very well.

Mr. KLEIN. Congress has the power to enact laws involving interstate commerce as determined by the United States Supreme Court, and it has been called upon on many different occasions to determine whether or not the manufacturing operation, as such, is the doing of interstate commerce or directly or substantially affects interstate commerce so as to be within the power of the Federal Congress to make regulations in respect thereto.

The Supreme Court in an early decision way back, in the case of *Kidd* vs. *Pearson*, which dates back a great

202 many years ago, was called upon to discuss that very question, and the Supreme Court said, and I am quoting;

Manufacturing is transformation—the fashioning of raw materials into a form for use.

And on another occasion, the court said:

Commerce succeeds to manufacture and is not a part of it.

I am quoting from *United States* vs. *Knight*.

In other words, manufacturing is a thing apart, that precedes the shipping out, the commerce element. Manufacturing alone is a local matter, and the mere fact that a manufacturer brings materials into the State which he may need in his manufacture, or ships the finished product out of the State after a manufacturing operation of various phases wherein he transforms these various materials and assembles them, does not make the manufacturing operations themselves directly related to interstate commerce.

That is, the manufacturing is a thing apart from the shipment of materials in and the shipment of the completed product out after all these manufacturing operations.

Now, this same argument that is here presented by the Government and advocated by Mr. Carmody, as I understood him, has many times been presented and raised and argued before the Supreme Court.

Again in the *Pearson Case* they discuss the term
203 "Interstate commerce" as submitted here today by the Government, and they say:

If it be held that the term includes the regulation of all such manufactures as are intended to be the subject of commercial transactions in the future, it is impossible to deny that it would also include all productive industries that contemplate the same thing. The result would be that Congress would be invested, to the exclusion of the States, with the power to regulate, not only manufactures, but also agriculture, horticulture, stock raising, domestic fisheries, mining—in short, every branch of human industry. * * * The power being vested in Congress and denied to the States, it would follow as an inevitable result that the duty would devolve on Congress to regulate all of these delicate, multiform, and vital interests—interests which in their nature are and must be local in the details of their successful management.

That was one of the very early cases where the Supreme Court passed on the question of whether or not manufacturing operations contemplated the importation of raw materials into the State and the shipment of finished materials out of the State—whether the manufacturing operation was one for Federal regulation, whether that was interstate commerce.

Chairman MADDEN. What was that case about?

204 Mr. KLEIN. *Kidd* vs. *Pearson*, involved the question of regulation, as I recall, of a manufacturing operation. It was a Federal regulation involving at some phase the question of a manufacturing operation.

Mr. CARMODY. In what year, do you remember?

Mr. KLEIN. That would be back—that dates back fifty years ago.

Chairman MADDEN. You do not have any idea of what sort of regulation was involved?

Mr. KLEIN. I have not completely abstracted all these points, whether it was a tax question or not.

Chairman MADDEN. I was wondering whether it was not the case where a manufacturer was claiming that his manufacture was an interstate operation in such a way that the State couldn't tax him?

Mr. KLEIN. It was a tax case, I believe.

Chairman MADDEN. Well, do you think——

Mr. KLEIN. And he claimed to be in exclusion by virtue of the fact that he was manufacturing. He made the very claim which the Government now makes, and the court declared that he was wrong in his conclusion.

Chairman MADDEN. So the court really was not talking about a government regulation at all. It was talking about a claim on the part of the manufacturer of exemption from taxation.

Mr. KLEIN. They discussed in that case also circum-
205 stances similar to these, including the *Schechter case* and including the *Adair case*, which you undoubtedly are very familiar with.

Chairman MADDEN. Then the Court couldn't decide in *Kidd* vs. *Pearson*—couldn't decide that Congress could regulate manufacture there, because the Court hadn't that question before it.

The question that the court had before it was whether this enterprise could escape taxation on the ground of its being an interstate enterprise.

Mr. KLEIN. That is true, but they declared that it was purely local and it wasn't within the power of Congress to regulate it, and it wasn't within the scope of Congress to regulate it, and in deciding that it was local and not within the Federal power of regulation, they made that ruling which has been sustained and quoted by the Supreme Court in cases involving congressional regulation which I will refer you to.

Chairman MADDEN. Do you think that the inventory of a meat packer on the tax day is taxable by the State in which that inventory is?

Mr. KLEIN. A meat packer? I think so.

Chairman MADDEN. You think it is taxable?

Mr. KLEIN. Yes.

Chairman MADDEN. Do you think that the business of a meat packer is subject to regulation by the Congress?

Mr. KLEIN. Why, certain phases involving the shipment, I would think; yes, involving the shipment purely, but not the manufacture—anything they did within their manufacturing operation or their local operation would not be.

Chairman MADDEN. Do you mean that the Government couldn't go in and regulate in that packery the question of what kind of meat they would pack and the sort of inspection they must give it, and so forth?

Mr. KLEIN. They can do that only insofar as it involves the shipment out of the State—insofar as it involves shipment out of the State, but they cannot, as far as I understand it, regulate the employee relations or the operations or the canning of it and so forth. I do not so understand.

Chairman MADDEN. Are you familiar with what they do, in fact—with what the Government does?

Mr. KLEIN. I would want to know more about the packing operation before I would want to pass on it.

Chairman MADDEN. Well, don't you think it is very much in point here?

Mr. KLEIN. If I had the facts, why, I would be glad to express myself.

Chairman MADDEN. Well, go ahead.

Mr. KLEIN. We have had the Court, speaking in the teeth of *Heisler* vs. *Thomas Colliery Company*, very recently, in which they discussed the question of interstate commerce and the question of bringing the materials in prior to the manufacturing operation and shipping the finished product out after the manufacturing operation, and the Court there said:

> If the possibility, or, indeed, certainty of exportation of a product or article from a State determines it to be in interstate commerce before the commencement of its movement from the State, it would seem to follow that it is in such commerce from the instant of its growth or production, and in the case of coals, as they lie in the ground. The result would be curious. It would nationalize all industries, it would nationalize and withdraw from State jurisdiction and deliver to Federal commercial control the fruits of California and the South, the wheat of the West and its meats, the cotton of the South, the shoes of Massachusetts and the woolen industries of other States, at the very inception of their production or growth, that is, the fruits unpicked, the cotton and wheat ungathered, hides and flesh of cattle yet "on the hoof," wool yet unshorn, and coal yet unmined, because they are in varying percentages destined for and surely to be exported to States other than those of their production.

It discusses both phases, prior to their production and after the completion of the production, and operation.

And recently, in the *Schechter case*——

Chairman MADDEN. Now, just a moment. What was that case about?

Mr. KLEIN. I think that also involved a question of taxation, as I recall it.

Chairman MADDEN. That is, some enterprise was attempting to escape State taxation——

Mr. KLEIN. Involving a coal mining operation.

Chairman MADDEN. On the ground that it was shipping its product in interstate commerce.

Mr. KLEIN. Then, we have the *Schechter case* which involves the validity of the N. R. A., in which they had this famous section 7–A, among other things.

And in that case it was a shipment into the State of New York where the Schechter Company slaughtered and sold. There was only one phase of the shipment, too. It did not involve the shipment out, because they sold their product in the State.

But if there were a strike at the Schechter place the shipments to would have varied, and they would have been substantially less possibly, and the court discussed the commerce question in that case, and said:

Where the effect of intrastate transactions upon interstate commerce is merely indirect, such transactions remain within the domain of State power. If the commerce clause were construed to reach all enterprises and transactions which could be said to have an indirect effect upon interstate commerce, the Federal authority
209 would embrace practically all the activities of the people, and the authority of the State over its domestic concerns would exist only by sufferance of the Federal Government. Indeed, on such a theory, even the development of the State's commercial facilities would be subject to Federal control.

And in that case they cite *Kidd* vs. *Pearson* and these other cases involving manufacturing operations. And they go on to say:

The fact that there may be an indirect effect upon interstate commerce does not subject the parties to the Federal statute, notwithstanding its broad provisions. This principle has frequently been applied in litigation growing out of labor disputes. * * *

While these decisions related to the application of the Federal statute, and not to its constitutional validity, the distinction between direct and indirect effects of intrastate transactions upon interstate commerce must be recognized as a fundamental one, essential to the maintenance of our constitutional system. Otherwise, as we have said, there would be virtually no limit to the Federal power, and for all practical purposes we should have a completely centralized government. We must consider the provisions here in question in the light of this distinction.

That case involved a question of labor relationships,
210 as this case does, and the court had before it very eminent counsel for the Government and very eminent counsel appearing for the litigants, and they considered in that case all the phases of what might happen, as was argued to the court, in the event of a strike in the city, in its local

operation, which would result in the slowing up of the shifting of transportation to the city of New York from points out of New York, and very recently, as late as four or five months ago, the Supreme Court held that that was beyond the power of the Federal Congress to regulate and pass regulations concerning such operations which included a manufacturing operation such as we have before us.

Now, there are a number of other decisions——

Chairman MADDEN. Wait a moment. What did you say as to any manufacturing operation involved in the *Schechter case*?

Mr. KLEIN. I said it discussed the manufacturing operations, and the language there used was applicable to manufacturing operations.

It discussed manufacturing operations in its decision and quoted those cases affirmatively.

Chairman MADDEN. Now, the court said in that case that if the Congress could regulate in the situation involved in the *Schechter case* it could regulate almost any imaginable transaction, however local. Do you really think that the enterprise of your client is like the enterprise of Schechter?

Mr. KLEIN. To this extent——

211 Chairman MADDEN. Wait. Do you really think that the biggest trailer manufacturer in the country, bringing in its raw materials from many States and shipping out its finished products to all States, and doing a business of many millions of dollars a year, is like this little poultry dealer in New York?

Mr. KLEIN. To this extent, that the same argument was made to the court that these shipments from out of the State to this poultry dealer—and his business was not so little. It was pretty sizable in dollars, I am advised—would, if he had a local strike in New York or Brooklyn—that it would cause a cessation of the shipment of poultry from out of the State into the city of New York and thereby would affect transportation and interstate movement, just as it is here argued that if we were to have a strike that it would affect the interstate movement of materials in, and the interstate movement of finished manufactured products in their completed state, out of the State.

To that extent the *Schechter case* is applicable and fully controlling here, and from the language of the opinion of the court in which it discussed at length what would happen in manufacturing operations having the same phases as we have here, it is my conception of that opinion that that opinion would be here absolutely controlling.

Chairman MADDEN. Do you have that opinion here?

212 Mr. KLEIN. I don't have it at full length.

Chairman MADDEN. There is one other sentence from it which you have not mentioned, which I should like to have your judgment of.

The Chief Justice took the trouble to state there that Schechter did not make any shipments out of the State.

Mr. KLEIN. I believe that is right.

Chairman MADDEN. Now, why do you suppose that he thought it was important to say that?

Mr. KLEIN. Well, because in that case—he was distinguishing in that instance, I believe, between the stockyards cases and the grain cases. In those cases, which were argued by the Government as being there controlling—in those cases—the stockyards cases and the grain cases—there was a continuous flow from one State to another and then out of the State with only a temporary stopping in the middle of the State.

Chairman MADDEN. Well, wait a minute. How temporary was that stopping?

Mr. KLEIN. Very temporary.

Chairman MADDEN. Cattle came into the stockyards, and then most of them went next to the packing plant, and they were considerably changed in form, were they not?

Mr. KLEIN. As I understood it——

Chairman MADDEN. And changed from live animals into sausages, and what-not.

213 Mr. KLEIN. As I understood it, they were not.

Chairman MADDEN. Wait a minute.

Mr. KLEIN. Pardon me?

Chairman MADDEN. Then, when there was a market for those sausages they were shipped on to that market.

Mr. KLEIN. As I understand those cases, and including the grain cases, essentially the same material that came into the State and remained there very temporarily, went out of the State.

Chairman MADDEN. Is that what you think takes place in Chicago?

Mr. KLEIN. That is what I construe it to be.

Chairman MADDEN. That cattle and hogs are brought into the stockyards as cattle and hogs and are shipped out of the State as cattle and hogs?

Mr. KLEIN. I suppose——

Chairman MADDEN. I suppose to almost an infinitesimal extent that is done. I suppose that almost 95 percent of the cattle and hogs that come into the stockyards at Chicago, Illinois, do not go out of the State of Illinois as cattle and hogs at all. They go out of the State of Illinois as hams, bacons, and sausages and other products of the packing

plants, and the court, in the *Stafford* vs. *Wallace* case says so in so many words.

Mr. KLEIN. It is essentially the same form that
214 they came in. I think the court says that, and that the stoppage there is temporary.

Chairman MADDEN. Well, the court does not say it. Do you say it?

Mr. KLEIN. Well, I will bring you the decision and you will see whether my construction is proper. That is my construction.

Chairman MADDEN. You do not say that sausage is essentially the same form as a live hog?

Mr. KLEIN. That is one of the points in that case.

Chairman MADDEN. What is the point?

Mr. KLEIN. That the product that comes into the State and goes out of the State is essentially the same product, and that there is only a temporary stopping point in the city of Chicago.

Chairman MADDEN. I still don't understand. That is, are we in contradiction as to the facts, as to whether they do in Chicago make sausage out of hogs?

Mr. KLEIN. No; I think I am quoting or at least referring to what I understand the court to hold in that case. He says that treat the material the same essentially.

Chairman MADDEN. You are completely wrong. The Supreme Court says in so many words that a large proportion of this live stock goes into the packing plants and is shipped out as meat. The court does not make
215 any pretense at all of saying that it goes out in the same form in which it comes in. It couldn't. That just wouldn't be the fact, so the court does not say it is a fact.

Mr. KLEIN. Well; they distinguish those cases in this *Schechter case*, as I understand it, on the ground that those cases involved a continuous movement of essentially the same kind of material that moved into the State.

Chairman MADDEN. No. There isn't a word in the *Schechter case* which leans in that direction.

Mr. KLEIN. I think they discussed the distinction between those cases. I don't think I have the case here, but I can have it before this Board and point it out.

Chairman MADDEN. I think you should. After all, you are arguing here a very great constitutional question. When you set yourself and your company up against the power of the Congress of the United States to accomplish a certain reform which it thinks it would be a wise reform, why, I suppose that the least that we can expect of you is that you will deal frankly with the precedents and that you will

talk to the Board about those precedents as the courts actually talked in them.

Mr. KLEIN. We will.

Chairman MADDEN. Now, you have shown that you are not familiar with the stockyards case and that you are not familiar with the *Schechter case*.

Mr. KLEIN. Well, I don't think that is a fair state-
216 ment. If you wish to have a full and detailed oral argument on the law, we will be prepared in full detail. As I understood this Board, you wanted me to base my argument essentially on the facts before it and in a general way to call its attention to these various precedents.

Chairman MADDEN. Well, we are very glad to have you call attention to the precedents and to have your views as to what those precedents mean, but we must get our facts right. I mean that we must know all the facts of the cases here in which the courts made the precedents and then we must know what the facts are as to what the court said and decided in those cases.

Mr. KLEIN. Of course, the *Scheohter case* is limited. I fully appreciate that. In the *Schechter case* we were dealing with the enactment of codes and the power of Congress to enact codes in that case, and chicken operation, and the control of labor conditions by virtue of these codes, and this Federal enactment had to do with where there was a shipment into the state of chickens to the city of New York and Brooklyn. Those were the facts in that case, essentially.

Chairman MADDEN. And that shipment was completed and title had passed to Schechter and no one contemplated that those chickens would ever again move in interstate commerce.

Mr. KLEIN. But they had moved in coming to the city of New York in interstate commerce, and the Government argued that if there were a strike——

217 Chairman MADDEN. I know what they argued there.

Mr. KLEIN. Exactly the same as the argument we have here. And the court in that case referred to these manufacturing cases and cited them in its opinion at length and held that the mere—you call it dicta—as to the shipments out of the state—well, it is dictum as to those—because the facts in that case did not involve shipments out of the state, but there were decisions in which those shipments were involved and which I called your attention to, and there are a great many other decisions which I would be very pleased to bring before this Board and analyze and discuss at length, which involved both the shipments to the point of manufacture and shipments of the completed product from the point of manufacture, and in which the court

held that the manufacturing operation in and of itself was not subject to congressional regulation, even though indirectly affecting interstate commerce by virtue of the shipments in and by virtue of the shipments of the completed product out of the state.

Those cases were set forth a number of times and quoted in the opinion of the Chief Justice in the *Schechter case* and cited with affirmance.

Chairman MADDEN. I was trying to think of any occasion where the Supreme Court attempted to regulate business of that kind except by application to it of the Sherman Act.

Mr. KLEIN. It did in the *Sherman Act case*, the
218 *United States* vs. *Knight*, and there are a number of Sherman Act cases.

Chairman MADDEN. Now, isn't it apparent to you as it is to other students of this question that you simply cannot reconcile all those Sherman Act cases with each other? That is, that the law went through an evolution there, so that there is no use, just no use of talking about making each one of those cases consistent with every other one?

Mr. KLEIN. I think there was a development of construction under the Sherman Act. There is no question about it. But I think that the most of our decisions on that point are along the line that we here advocate.

Now, I did not know how complete an argument that you wished, and I will have the various cases completely set out at length and briefs prepared, if you wish it, on that point.

Chairman MADDEN. All right. Go ahead.

Mr. KLEIN. I am merely offering in a general way the points which we are raising, rather than arguing them at great length, but if we are to have a complete and full legal argument, why, we will have these cases brought before you and analyze and discuss the facts in each one at length; and in many of these decisions the question of manufacturing operations and the fact that there was a shipment to the manufacturer preceding the manufacturing operation and a shipment out succeeding the manufacturing operation
219 did not make the manufacturing operation one of interstate commerce.

Now, the other point of the interstate commerce question raised is that of the employer-employee relationship. I believe the court has passed upon that question several times, and particularly in the case of *Adair* vs. *The United States*, in which it held that the relationship between employer and employee in a labor situation, particularly in the *Adair case*, where the facts are identical as far as the allegation of discrimination is concerned, which was denied,

but for the purpose of this argument assuming that there were.

In that case the court said that the relationship between employee and employer, even though it was one of an employer who was operating an interstate railroad, as I understand it, was not one of interstate commerce, subject to Federal congressional regulation.

And the court disposed of that question and said that was purely one for local determination and that Congress was without power or authority to enact such a law, as it is, we submit, here without power or authority to enact this Wagner bill involving local operations—or involving the relationship of employer and employee—that that is a matter of State power and not Federal regulation.

Now, on the due process clause——

Chairman MARCHEN. Now, just a minute.

Mr. KLEIN. Oh, yes. I am sorry.

220 Chairman MARCHEN. When you are talking about the powers of Congress regulating the employer-employee relationship, aren't you going to say anything about the *Texas and New Orleans case*?

Mr. KLEIN. Yes. The *Texas and New Orleans case* as I understand it, involved an interference with collective bargaining, and in that opinion the court said that the employer could not interfere with that right, but that he had nevertheless the full right to employ or discharge employees as he normally would.

I am not quoting the exact language, but I may even have it here.

"The Railroad Labor Act does not interfere with the normal exercise of the right of the carrier to select its employes, or to discharge them."

And it clearly——

Chairman MARCHEN. Don't you think the word "normal" meant something there?

Mr. KLEIN. The "normal right" means the normal right to——

Chairman MARCHEN. Don't you think it means the absolute right?

Mr. KLEIN. I think it means the absolute right.

Chairman MARCHEN. The unrestricted right?

Mr. KLEIN. Yes, sir. The full, free, unrestricted right to have the man working for him that the employer
221 desires to have working for him, just as the employee can refuse to work for any employer that he does not wish to work for. I think that is just what it says.

Chairman MARCHEN. Well, why do you suppose the court used the word "normal" there?

Mr. KLEIN. Because that is a normal right—that is a right that a person normally would have. That is my conception of it.

Chairman MADDEN. Do you think that Congress could compel the employer not to coerce his men into forming a union nor to coerce them against forming another union which they chose to form?

Congress could say "That is unlawful and we may order you not to do it, and if you do do it, you will be punished for it." But if the Congress should say if we discharge a man because he joins a union, that is an inalienable right of every employer which Congress can't touch.

Mr. KLEIN. Yes; I understand that.

Chairman MADDEN. That would be a stopping place, wouldn't it, drawing the line between what the Government may do and what it may not?

Mr. KLEIN. The Supreme Court in that case discussed this *Adair case* which was one directly here in point, that is whether or not an employer owning an interstate railroad could discriminate and discharge an employee because
223 he belonged to a union. We are not saying that is the fact here, but we are discussing that generally.

Chairman MADDEN. Isn't it the fact of the matter? You said the court discussed the *Adair case*—isn't it the fact that the court did not discuss it and very obviously did not discuss it?

Mr. KLEIN. I thought I said "distinguished it." It distinguished the *Coppage case* and the *Adair case*—it distinguished those cases and said, "However, the Railroad Act does not deprive the employer of his normal right to employ and discharge employees", which indicated that the rule of those cases was still in force, but that question was not there before it. The question there before it was whether or not the employer could deal exclusively with another association that he said represented the majority of the employees to the exclusion of the union.

Mr. CARMODY. May I ask the question there?

Mr. KLEIN. Yes.

Mr. CARMODY. What was the actual effect of that decision on the T. & N. O. Railroad? What did the T. & N. O. Railroad have to do as a result of that decision?

Mr. KLEIN. On that decision?

Mr. CARMODY. Yes, as a result of that decision.

Mr. KLEIN. I think there was some question of who they had to deal with in their relationship.

223 Mr. CARMODY. But what did they actually do as a matter of a fact as a result of the decision?

Mr. KLEIN. I am sure I don't know what they did.

Mr. CARMODY. You ought to know. You are quoting the opinion.

Mr. KLEIN. I am quoting the decision of the court. What they did after I don't know.

Mr. CARMODY. You are emphasizing the fact that the court said they had the normal right to discharge.

Mr. KLEIN. There was no discharge involved.

Mr. CARMODY. But you are not reciting the fact that the company had to make restitution and abolish a union that it had itself set up.

Mr. KLEIN. I don't thing there was any question of restitution there involved.

Mr. CARMODY. Well, look up the matter.

Chairman MADDEN. Well, now, Mr. Klein, this may be taking an unfair advantage of you here. That case, of course, went through three courts: The district court that granted an injunction, the circuit court of appeals that had affirmed that injunction, and the company felt its constitutional privilege so strongly that it grossly violated the injunction.

Mr. KLEIN. I appreciate that.

Chairman MADDEN. And then in the district court, I believe, it was held that the company was in contempt
224 of court, and that was the situation, and it finally went up.

So that there was that big record.

Mr. KLEIN. I realize that.

Chairman MADDEN. Well, as a matter of fact, I had that record examined the other day. That is the record of the actual facts in the case, and the part as to the company's contempt of court, and I feel quite sure of this: That a part of the company's contempt of court was the discriminatory discharge of workmen that belonged to the union.

Now, I will say for your exoneration that the opinion of the Supreme Court does not contain a single word on that subject.

Mr. KLEIN. Not a word. There is not a word in the Supreme Court decision involving the question of discharge.

Chairman MADDEN. Very well. Now, if those were the actual facts of that case, and if that railroad was, on the record in that case, being punished for contempt for making discriminatory discharges, what do you then think that the Supreme Court and the Chief Justice meant when he said in his opinion when that decree of contempt was affirmed—what do you think he meant when he said in his opinion, that this Act does not affect the normal right to employ and discharge?

Mr. KLEIN. I don't think in deciding that case he was

considering the question, and he expressly excluded the question.

Chairman MADDEN. You don't think he knew what
225 his facts were?

Mr. KLEIN. He knew them very well.

Chairman MADDEN. Well, then, if he knew what his facts were, wasn't he deciding it on his facts?

Mr. KLEIN. That was not the question he was deciding, as I understand it.

Chairman MADDEN. But the net result was his decision. I am assuming that my recollection is not inaccurate on this. The effect of his decision was to punish a railroad for discharging men because they belonged to a union. Then he says in his opinion, "This act does not interfere with the normal right of employers to employ and discharge."

And won't you be charitable enough with that language to assume that his opinion was consistent with his decision?

Mr. KLEIN. But that was not the question that he was passing upon.

Chairman MADDEN. How could he help passing on it, if those were the facts of that case?

Mr. KLEIN. The facts, as I understand it, in that case, involved the operation of the railroad statute which provided for the right of employees to bargain collectively and with the formation of a so-called railroad company association with which the railroad persisted in dealing to the exclusion of the union, claiming that this railroad association represented the majority, and not the union.

226 And after the injunction of the district court, wherein it was held that they were to be enjoined from dealing with the company association instead of the union, and wherein they were enjoined from carrying on certain activities with the company association, so-called, they violated that phase of the injunction, but it did not involve—the question before the Supreme Court was not the right to hire or discharge employees for discrimination. That wasn't the question.

The question was the power to regulate so as to permit an individual who was employed to get the groups of individuals also in the employ of an employer to bargain collectively, and his right not to be interfered with in that collective bargaining, and the court expressly said——

Chairman MADDEN. Do you think that you have a law which says to the railroad, "Don't interfere with your men in their getting together and forming a union for collective bargaining", but in back of that the Constitution says, "You can fire every last one of them that you catch doing it!"

Mr. KLEIN. That is just what it says, and the court has so held. I will quote you from that very case, and it cites this case as though it were a case still in effect, in the *Texas case.*

The court in the *Texas case* did not say, "The *Adair case* is overruled." It said, "That case is distinguished and the normal right to employ or discharge an em-
297 ployee is still retained by the employer."

Now, on that point of due process——

Mr. EDWIN S. SMITH. What do you mean by the statement that the court distinguished the *Adair case?*

Mr. KLEIN. Well, it was cited by the court to the effect that the Government or Congress could not regulate the relationship which reserved to the employee the right to bargain collectively.

Mr. EDWIN S. SMITH. Well, the *Adair case* involved the discharge.

Mr. KLEIN. Oh, the *Adair case* did.

Mr. EDWIN S. SMITH. Why? In that case involving the Texas & New Orleans, why did the court distinguish the *Adair case?* Why was it important if it was not involved?

Mr. KLEIN. They said it was involved. It was argued by railroad counsel that it was involved. They said by virtue of the *Adair case* the lower court decision should be reversed. And they said, "No. The *Adair case* involves the question of discharge for union discrimination, and that case is not like the case we are here considering, and we are distinguishing it, but after that we want the employer to know, and so rule that this does not interfere with the normal right to employ and discharge."

In other words, that question was not before it and the *Adair case* was different from the case before it, but
298 the *Adair case* was still the law.

They did not overrule it, but they said it was a different case. That is why I indicated that that is still the law and the *Schechter case* does not overrule the *Adair case.*

Mr. EDWIN S. SMITH. I raise that question because I have been told that the important thing about the decision in that case was they did order the company to make certain restitutions in harmony with the decision the lower court made, including the reemployment of the discharged men. Now, in the main part they talk about collective bargaining.

Mr. KLEIN. They talk about collective bargaining——

Mr. EDWIN S. SMITH. But they did affirm this lower court's decree, and I was wondering whether that distinguishment of the *Adair case* might possibly have some relationship to that.

Mr. KLEIN. I did not so understand. I understood they distinguished it because the question was the right of an employee not to have his own personal relationship or contacts or relationships interfered with by someone else. It was the employee's right that was being invaded but not the right of the employer to discharge or employ whomsoever he wanted.

And that was the question involved in the *Adair* case, which I will discuss in a minute.

Chairman MADDEN. Can you have collective bargaining without an organization?

229 Mr. KLEIN. You might not have, I suppose, since collective bargaining means more than one. The word "collective" means that.

Chairman MADDEN. If people were interfered with in their organization, then would you have collective bargaining—"normal", let us say, as you use the word "normal"?

Mr. KLEIN. It depends upon what you mean by the being interfered with, Mr. Chairman. If they were prevented from getting together, then they would be prevented from acting collectively in a group, naturally, and the extent of the interference depends on the circumstances in each case.

But collective bargaining means that there must be more than one workman getting together to discuss some proposition.

Chairman MADDEN. Yes.

Mr. KLEIN. But of course there is a phase of this Wagner Act, which I will discuss in just a moment, involving the question of collective bargaining, which is vicious to the employees. That is, the majority rule provision, where an individual employee, or a minority group which does not wish to have the majority group bargain for it—that individual employee, or that minority group, is compelled to have the majority group deal for him, or it, exclusively. That man is deprived of his right that is assured him, to deal with his employer about his own wages and working conditions, and employment, to the exclusion of the union, if he does

230 not care to have the union talk for him.

But as I say, I will discuss that later. I do not know if that is directly involved in the facts that we have before us, but it is in the act as a whole.

On the question of due process, the phrase dealing with the freedom of contract on the part of an employer, to make such contracts with—to make such contracts of employment as he feels are to the best interests of his business, we say that is violated by the various sections—which we have detailed—of the Wagner Act.

In that connection, assuming that there were discrimina-

tion—which we again submit there is not; but for the purposes of the motion, considering it from that standpoint, even if there were discrimination, we submit that it is the right of every employer to determine for himself just precisely who his employees are to be; and that if he discharges a man that is working for him, for any reason whatsoever, he is fully within his constitutional rights.

Now, under the due process laws of the Constitution of the United States, men in this country at least are given that assurance of the right of liberty of contract. We can no more contend otherwise than we can contend that an individual, any one, you or I, could be compelled to work for another man that he did not want to work for. That would violate the due process clause, if the Congress at-
231 tempted to say to you, or to me, or to anyone else, that we had to work for a certain company, because then we would be serving an employer against our will. Our right to freedom of contract of employment would be violated just as if we told these seven workers whom they had to work for. If Congress said that to them, they would be deprived of their free right of contract of employment with the man for whom they desire to work as to the terms of their employment, their hours, and so forth.

And so likewise the employer can determine, under our Federal Constitution, at least precisely whom he will employ in his factory; and if he is of the opinion—not that the Fruehauf Trailer Company has taken that position, but for the purpose of this motion to dismiss we must accede or conform to the alleged facts as stated in the complaint—I say even if the employer has discharged a man for a union affiliation, which we deny, why, even if he did, and for no other reason, under the decisions of the Supreme Court of the United States, every employer has the full right to hire or discharge employees as his own discretion dictates, as he thinks wise, and for the best interests of his own business; because he must operate that business; it is his investment; and if he believes that a man who is working for him is not going to operate that business to the best interests of the business, or if he feels that that employee does not have the best interests of the business at heart, or for any other
232 reason, he is at full liberty, under our constitutional guarantee, to discharge that man.

Now, then, I——

Chairman MADDEN. Do you mean that there is something in the Constitution that prevents any of the branches of our Government from regulating anything with respect to labor contracts?

Mr. KLEIN. I am talking about the normal contract be-

tween the employer and the employee; the right of free contract.

Chairman MADDEN. Well, now, when you say "normal", do you mean that both of them——

Mr. KLEIN. Well, now——

Chairman MADDEN. Are males, of the age of 21 and over?

Mr. KLEIN. If you will cite to me a certain state of facts, I will try to give you what my construction is of that provision, rather than dealing in generalities.

I am afraid we have got to a point here where we do not quite understand each other—or at least I am not making myself clear to Your Honor.

Chairman MADDEN. Well, I think——

Mr. KLEIN. I believe that it is a free and unrestricted right that every employer has, to elect to hire or discharge employees for any reason that the employer sees fit, just as every employee has the right to work for whomsoever he wishes to work in this city, and not work for
233 someone he does not want to work for. It is a compensating right.

I think that is so.

Chairman MADDEN. When they came along and put the 13th amendment in the Federal Constitution, that was a rather one-sided amendment, was it not? It said that slavery should not exist any longer.

Now, did they put in some compensating thing on the other side?

Mr. KLEIN. That was a different proposition. There was certainly a difference in degree there. Slavery means the ownership of an individual, owning him body and soul; but freedom of contract comes under the due process clause.

Chairman MADDEN. Realizing what slavery, involuntary servitude means——

Mr. KLEIN. Well, I think that goes—I think that you may have it without reference to Congress. That goes——

Chairman MADDEN. (Continuing.) A State statute nowadays which, for instance, provided that if one owed another person a debt, the other person could seize the debtor and compel him to work out the debt, would be a violation of the 5th or 14th amendments, rather than the 13th amendment, do you think?

Mr. KLEIN. No; I think that probably would fall under the 13th amendment.

Chairman MADDEN. And no court has ever thought that it fell under the 5th amendment or the 14th amendment?

234 Mr. KLEIN. No; but the courts have held that the right of an employer to discharge or hire such em-

ployees as he sees fit, does come under the fifth amendment—and I will cite you the case, in fact I was about to do so. I refer to the case of *Adair* vs. *United States*, 208 U. S. 161.

In that case there was an interstate railroad I believe on which an individual who was working for that railroad, was discharged by the man Adair, an agent of the railroad, in alleged violation of a criminal statute passed by the Congress, which made it a crime for an interstate carrier to discharge an employee, or discriminate against him because of his union affiliations or activities. I may not be quoting the exact words, but that is the substance of the statute.

Adair, the officer of that railroad, was charged with the crime of violating that Federal Statute, by discharging an employee by the name of Coppage.

It is not the *Coppage case*——

Mr. CARMODY. No, no.

Mr. KLEIN. There were two Coppages.

Mr. CARMODY. There were two Coppages. There was a Coppage in the *Adair case*, and there is also a *Coppage case*, a famous case.

Mr. KLEIN. Yes.

Mr. CARMODY. But the name is simply a coincidence.

Chairman MADDEN. Are you a lawyer?

235 Mr. CARMODY. Well, to that extent, Mr. Chairman. I have been associating with them so much lately that I guess I am absorbing a little of the legal attitude.

Mr. KLEIN. In that case the charge was that he had discriminated against the employee Coppage because of his union activity. Adair, the railroad employee, demurred I believe to the indictment—that is admitting all of the allegations to be true—and said that even though he or the railroad had discharged this employee for union activities, no crime had been committed because the statute enacted by the Congress violated the fifth amendment to the Constitution the due process clause, which I have just been discussing.

In discussing that question, the Supreme Court of the United States, in the *Adair case*, which I again submit is still in force and effect, said at page 174:

> It is not within the functions of government * * * to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another.
>
> The right of a person to sell his labor upon such terms as he deems proper is in its essence the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it.
>
> So the right of the employee to quit the service of the 236 employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee.

It was the legal right of the defendant Adair, however unwise such a course might have been, to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so, however unwise such a course on his part might have been, to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization.

In all such particulars the employer and the employee have equality of right, and any legislation that disturbs that equality is an arbitrary interference with the liberty of contract which no government can legally justify in a free land.

And then later on, in the *Coppage case*——

Chairman MADDEN. Now, that seems to be very plain, does it not?

Mr. KLEIN. Yes; it does.

Chairman MADDEN. It looks as if all enlightened people ought to go along with that, would you say?

Mr. KLEIN. Why, yes; I would think so. I think our Supreme Court is a very enlightened body.

Chairman MADDEN. Who were the dissenting judges in that case?

287 Mr. KLEIN. I think that Mr. Justice—one of the justices did not sit, I believe, as I recall it now, and I think there was a dissenting opinion; however, I am not sure about that. I think that one of the justices did not sit, and I am not sure about a dissenting opinion in that case.

I know Mr. Justice Hughes dissented in the *Coppage case*, and tried to distinguish that from the *Adair case;* and I think Mr. Holmes, Mr. Justice Holmes, dissented in one of the cases; I think it was the *Adair case.*

Chairman MADDEN. Well, now, Mr. Justice Holmes and Mr. Justice Hughes took quite the opposite view, did they not?

Mr. KLEIN. No; Mr. Justice Hughes took the dissenting view in the *Coppage case.*

Chairman MADDEN. Yes.

Mr. KLEIN. And distinguished the *Coppage case*, and said it was a different case than the *Adair case;* not that he overruled the *Adair case*, but he said that the *Coppage case*, which imposed as a condition precedent to the employment of Coppage, that if you do not join a union, was different from the discharge of a man because he belonged to a union, as in the *Adair case.*

I do not think that his grounds of distinguishment were very well taken—that is the majority of the court there did not think that they were very well taken; but as I say, he tried to distinguish that case.

238 Chairman MADDEN. My only point in connection with this——

Mr. KLEIN. Yes——

Chairman MADDEN. Is simply this, that after all, the judges themselves disagreed with each other, did they not, about this very thing which you stand before us here and now and say is so plain that any enlightened person ought to be able to see it?

Now, the judges of our Supreme Court saw it differently, did they not?

Mr. KLEIN. There was one dissenting judge—there was one dissent.

Chairman MADDEN. And in the *Coppage case* there were three dissenting judges, were there not, and two of them, Mr. Justice Holmes and Mr. Justice Hughes, are after all very great judges?

Mr. KLEIN. There is no question about that. But Justice Hughes dissented, not on the ground that the *Adair case* was overruled, but as I say, he tried to distinguish the *Coppage case.*

Chairman MADDEN. But you say here, now, that there was not any sensible distinction between the *Adair case* and the *Coppage case?*

Mr. KLEIN. I do not believe in principle that there is, and I think that a majority of the Supreme Court did not think that there was, either.

239 Chairman MADDEN. When at least two very great justices thought there was?

Mr. KLEIN. But Mr. Hughes——

Chairman MADDEN. Does that not make you at least a bit sympathetic with people who perhaps agree with those two very great judges?

Mr. KLEIN. The Chief Justice in that case, Mr. Hughes—not then Chief Justice, but a justice at that time—said in that case—he did not say that the *Adair case* was overruled, but as I have said before, he merely said that the State statute involved in the *Coppage case* was different than it was in the *Adair case.*

Chairman MADDEN. Yes?

Mr. KLEIN. But we are dealing with the *Adair case,* which is the question I want to discuss, the constitutional question, that even if there were discrimination, we nevertheless had the right to discharge.

Chairman MADDEN. Well, you would not want this Board to draw that distinction, would you?

Mr. KLEIN. I would not want you to, no.

Chairman MADDEN. You would not want us to say that you cannot discriminate against a man by refusing to employ him because of union activities——

Mr. KLEIN. No.

Chairman MADDEN (continuing.) But you can dis-
240 criminate against him by discharging him for union activities?

Mr. KLEIN. The *Coppage case* did not involve, as I understand it, the discharge of a man for union activities. As I understand it, the *Coppage case* involved the question of whether or not the employer could ask or compel employees not to join a union; that is, interfering with the right of the employee, as the employee saw it, to join a union.

In other words, the employer said—

> If you will not make that kind of a contract, I will not employ you. But if you want to agree not to join a union while you are working for me, I will employ you.

That did not involve the question of union activities, but it involved the question of whether or not an employer had the right to require an employee not to join a union, in advance of his employment, as a condition precedent to his employment; and the Supreme Court said that he had such a right.

The majority of the court held that he had such a right, and Mr. Justice Hughes, dissenting, tried to draw a distinction between that case and the *Adair case*, which involved a discharge under employee relationship; but he did not say that the *Coppage case* overruled the *Adair case*, or that the *Adair case* should be overruled.

Chairman MADDEN. Could you guess what he thought about it?

Mr. KLEIN. I believe that if he dissented in the *Coppage case*, he should have dissented in the *Adair case*, as I
241 said before, and I think that the majority of the court thought so too; but nevertheless he did not do so.

Chairman MADDEN. And do you think that might throw a little light on what he meant by "normal" in the *Texas & New Orleans case*?

Mr. KLEIN. I still think that by "normal" he meant the rule as it is set out in the *Adair case*, or he would have said that that case was overruled by the other decision.

Chairman MADDEN. Is that the way judges always do?

Mr. KLEIN. No; it is not. Lawyers are very peculiar people also, Mr. Chairman—and Mr. Carmody.

Mr. CARMODY. Let me develop one point right there if I may.

Do you feel that these relationships are fixed for all time?

Mr. KLEIN. What do you mean?

Mr. CARMODY. I mean the relationship of employer and employee, which you have been discussing here. Do you believe that that is fixed for all time?

Mr. KLEIN. Yes, sir, I do, under our Constitution, and our Government.

Mr. CARNEGIE. As long as we have our Constitution, and our Government?

Mr. KLEIN. As long as we have a Supreme Court, and a Constitution, I think that the due process clause is
942 fixed, and the employer and employee relationship is fixed.

I do not believe that a man can be made to contract to work for an employer he does not care to work for, no more than as the courts have said, an employer can be made to employ any one he does not care to have work for him.

Mr. CARNEGIE. Do you think that it is likely that enlightened judgment may some time reach the conclusion that a man who has invested, say, thirty five years of his life with one employer, has no right to any further consideration, but that he may be discharged at 6 o'clock tomorrow night, for any reason, or no reason, without any further consideration?

Mr. KLEIN. I believe that every employer, every well-minded employer, will always have every fair regard for his employees.

Mr. CARNEGIE. No; that is not the question. Under the law as it is, or under our present Constitution, do you feel that so long as we live under our present Constitution——

Mr. KLEIN. I believe——

Mr. CARNEGIE. That the employer will have that right?

Mr. KLEIN. Yes.

Mr. CARNEGIE. Without giving any excuse to anybody.

Mr. KLEIN. Exactly.

Mr. CARNEGIE. And that the man who has spent his lifetime—or who has invested it, let us say; not spent, but who has invested his lifetime, and his skill, and everything else——

943 Mr. KLEIN. Just as much as——

Mr. CARNEGIE (continuing). Gets no more consideration than the man who was employed yesterday morning?

Mr. KLEIN. Under our Government that is so, just as much as——

Chairman MANNING. Why should you——

Mr. KLEIN. If I may finish——

Chairman MANNING. Why should you want to put that sort of a strain on the Constitution?

Mr. KLEIN. I do not believe that it is a strain, Mr. Chairman. I believe it is a guarantee to the workman as well as to the employer, and I will quote you from a case where the Supreme Court discussed that.

Chairman MANNING. You tell me in your own language.

Mr. KLEIN. I would rather take their language, I think, Mr. Chairman, because it carries a little more maturity, perhaps, and greater weight than any language that I could use; and incidentally, they are still the Supreme Court, the supreme law of the land.

They discussed that very question in a labor case, and they say:

It forbids——

That is, this regulation in reference to labor relations.

two parties having lawful capacity, under penalties as to the
244 employer, to freely contract with one another in respect of the price for which one shall render services to the other in a purely private employment, where both are willing, perhaps anxious, to agree, even though the consequence may be to oblige one to surrender a desirable engagement, and the other, to dispense with the services of a desirable employee.

And then the court went on in that case to say further:

To sustain the individual freedom of action contemplated by the Constitution is not to strike down the common good, but to exalt it; for surely the good of society as a whole cannot be better served than by the preservation against arbitrary restraint of the liberties of its constituent members.

Mr. PATTERSON. What is that case?

Mr. KLEIN. *Atkins* vs. *Children's Hospital.* A similar question of the relationship of employer and employee was there involved; and it was there urged upon the court——

Chairman MADDEN. That was a matter of minimum wage, was it not?

Mr. KLEIN. That is correct.

Mr. PATTERSON. Yes.

Mr. KLEIN. That is correct, but a similar question of employer-employee relationship was there involved.

Mr. CARMODY. Mr. Klein, I would like to ask you one or two further questions.

Mr. KLEIN. Yes, sir.

Chairman MADDEN. If I may ask first——

245 Mr. CARMODY. Certainly.

Chairman MADDEN. Is it not a fact that in the State of Massachusetts they have had minimum wage laws for a great many years?

Mr. KLEIN. That is true.

Chairman MADDEN. And that as a matter of fact the employers have never even litigated them.

Mr. KLEIN. Oh, yes; that is true. I think Mr. Smith here was very active in the enactment of those laws. I may be misinformed, but I have been so advised.

Mr. EDWIN S. SMITH. As a matter of fact, for purposes of accuracy of the record, you are both wrong. I had nothing to do with the enactment of the minimum wage law.

Chairman MADDEN. No; I did not say you did.

Mr. EDWIN S. SMITH. No; I am just taking care of counsel, now.

Mr. KLEIN. I will plead guilty to having been misinformed, then, sir.

Chairman MADDEN. Are there no minimum wage laws in Massachusetts?

Mr. EDWIN S. SMITH. There is a minimum wage law in the State of Massachusetts—or there was a minimum wage law in the State of Massachusetts which was not mandatory upon the employer; but if he failed to pay the minimum wage set forth in the wage bulletins issued by the
246 Minimum Wage Commission, his name was published as one who would not pay those minimum wages. That law was litigated by the employers and sustained by the State courts.

Subsequently they adopted a mandatory law, which the Attorney General has said is unconstitutional in its present form, but which has not been litigated as yet.

Now, I am sorry; I did not want to interrupt the flow of the argument.

Chairman MADDEN. Mr. Carmody.

Mr. CARMODY. I would like to ask a question or two. Coming back again to this matter of employer and employee relationship, and your statement that so long as this present system of Government stands, the employee will never have any rights which he should have acquired as a result of long service for an employer, sufficient to prevent his discharge for any reason whatsoever that the employer may give, or no reason. Now, following that just a step further, I wonder if the fact that, in our changing technology, we have even now, in spite of all of the efforts of Government and of private industry between nine million and ten million workmen, competent, skilled workmen, totally unemployed, many of them likely never again to be able to get employment in industry will have any bearing on the right of an employer to discharge an employee, irrespective of reason, or for no reason?

Do you think that is likely to have any effect on
247 the thinking, even of judges and of lawyers?

Mr. KLEIN. The problem is of course, Mr. Carmody, the great problem, that employment cannot be had unless there is a demand, which results in employment. Now, some people have the theory, in politics and economics, that by the regulation of business, in various phases of business, we can go along and increase production.

Chairman MADDEN. Let me interrupt.

Mr. KLEIN. Yes, sir.

Chairman MADDEN. You are not talking to Mr. Carmody's question now.

Mr. KLEIN. I am sorry.

Chairman MADDEN. Let me try to rephrase it, if I may.

Mr. KLEIN. Yes, sir.

Chairman MADDEN. If arbitrary discharge nowadays means practically a sentence to destitution, because other employment is so difficult to get, do you think that the courts might look more charitably upon legislation which would, say, protect a workman against that very dreadful consequence, when perhaps 20 years ago, when they considered these other cases, when the consequence would not by any means have been so dreadful, they would have looked differently at it?

Mr. KLEIN. I would say——

Chairman MADDEN. Do you think that things like that make any difference, or not?

248 Mr. KLEIN. I would say that a far-seeing judge would follow that same rule, because if he changed that rule—and we think that the Wagner Act, if upheld and sustained, will change that rule—there would be far more grave and serious economic consequences to the workmen as well as to employers generally; and for that reason I think that a far-seeing judge will still follow the rule of freedom of selecting an employer, on the part of the workmen, and freedom on the part of the employer to select his employees; because the philosophy of our country today has been, both economically, politically, and constitutionally, that every man has the free right to work for whomsoever he will, and every employer has the right to hire whomsoever he will; because if the business of the employer fails, the Government does not take care of him; and that business will fail if he does not get employees working for him who are industrious, and who have the interest of their employer at heart; and if the employer fails, there is less employment.

Mr. CARMODY. Well, now, let us see——

Chairman MADDEN. Just a moment, please.

Mr. CARMODY. May I follow up this point just a moment further?

Mr. KLEIN. That is my philosophy.

Mr. CARMODY. I may not phrase it quite right, but I know what I am trying to get at.

249 Mr. KLEIN. Yes, sir.

Mr. CARMODY. You say that the reason why we should go on as we have gone in the past, and the reason why judges should not think differently, is because we have had continuous employment, and the employees have gotten a better deal than they could get by some other arrangement; is that true?

Mr. KLEIN. I think over the period of the development of this country that the——

Mr. CARMODY. Well, let us take the present.

Mr. KLEIN. Yes.

Mr. CARMODY. Let us take the years that you and I both know about.

Mr. KLEIN. All right.

Mr. CARMODY. Let us take the last five years.

Mr. KLEIN. All right, sir.

Mr. CARMODY. Let us take the last five years, and talk about this matter of the employer failing if his employees do not work industriously——

Mr. KLEIN. And harmoniously.

Mr. CARMODY. And harmoniously—because he cannot get any help from the Government. You are aware of the amount of money that the R. F. C. has loaned to business, are you not?

Mr. KLEIN. There is no question about that.

Mr. CARMODY. You are also aware of the fact that a great deal of the present prosperity right here in the city of
250 Detroit, is the direct result of Government spending during the past few years, are you not?

Mr. KLEIN. Yes.

Mr. CARMODY. When billions of dollars have been spent——

Mr. KLEIN. That is right.

Mr. CARMODY. For labor and for relief.

Mr. KLEIN. But the R. F. C. is very careful to get very good and adequate security for any of its loans.

Mr. CARMODY. Well, not all of them.

Mr. KLEIN. Well——

Mr. CARMODY. In as many cases as they can.

Mr. KLEIN. As many as they can.

Mr. CARMODY. Yes.

Mr. KLEIN. And they will not loan a business if they know that the security is not there.

Mr. CARMODY. However, we do know that even this year four billions of dollars of Government money are being spent to take care of people who cannot get employment, who have not been able to get employment over a period of time.

Mr. KLEIN. That is unquestionably true.

Mr. CARMODY. And we also realize that even now, in spite of the fact that there has been a tremendous increase in production, employment has not kept pace with that increase in production, do we not?

Mr. KLEIN. I know that employment in Detroit, for
261 instance, is up pretty well.

Mr. CARMODY. Up pretty well?

Mr. KLEIN. Very well.

Mr. CARMODY. But the number of man-hours required to produce any given unit of production, is not as great now as it was five years ago, is it?

In other words, there is a declining employment, in spite of the increased production. That is why I asked you whether or not, in view of those facts, facts that you are just as familiar with as anybody else is, and in view of our changing technology, and the constant speeding up of production in our factories, which is a well-known fact, certainly—I say, in view of all that, do you think that there is not quite likely to be a different relationship between employer and employee, because, as the Chairman has well said, frequently today when a man is discharged from his job, he may never get a job back again, but he may be on charity for the entire remainder of his life.

Mr. KLEIN. That may be.

Mr. CARMODY (continuing). With all that that means; and he may have been or he may be a skilled man, but he is still unable to get a job; and there are many such throughout the country.

Mr. KLEIN. There will be some unemployment.

Mr. CARMODY. Some?

252 Mr. KLEIN. Yes.

Mr. CARMODY. Well, I am not talking about "some" employment; I am talking about a large amount of unemployment.

Mr. KLEIN. Yes.

Mr. CARMODY. Yes.

Mr. KLEIN. But in Detroit particularly——

Mr. CARMODY. Yes?

Mr. KLEIN. Where we have been free to a large extent from unionization of our industry, our scale of wages I believe is considerably higher than it is in other industries where there is complete unionization, and very often domination of the employees by the union, where the employees do not want to join the union.

Mr. CARMODY. Do you differentiate between scale and annual income?

Mr. KLEIN. Well, hourly wages.

Mr. CARMODY. Well, I mean, you draw a differentiation there, do you not?

Mr. KLEIN. I think they are both higher.

Mr. CARMODY. And the annual income is higher too?

Mr. KLEIN. Yes, sir; I believe that is so. I do not have the statistics before me, but I am advised to that effect.

Mr. CARMODY. I just wondered how you thought about these things.

Mr. KLEIN. Yes.

253 Mr. CARMODY. Because I have never had the same conception of my country as you have expressed here, at all. I have never had that conception of it. I have had an entirely different one.

I have thought of my country, and your country—our country—as an entity that was really interested in the human aspect of our life.

Mr. KLEIN. I think it is.

Mr. CARMODY. Yes?

Mr. KLEIN. I think so.

Mr. CARMODY. Well, I cannot quite get that out of what you said.

Mr. KLEIN. I think that the Wagner Act would defeat that.

Mr. CARMODY. How?

Mr. KLEIN. I say, the Wagner Act would defeat that, the very object that both you and I have in mind. It is a method of precedure to destroy that very object.

However, I am afraid we are getting rather far afield, now, from our legal point.

Mr. CARMODY. Take the right of the men to organize themselves, as their employer does. All of the employers here belong to an association, do they not?

Mr. KLEIN. They possibly do pretty generally, yes.

Mr. CARMODY. Yes.

254 Mr. KLEIN. But no association tells the employer what he must do, how he is to operate his factory, I am sure.

Mr. CARMODY. It does not?

Mr. KLEIN. No.

Mr. CARMODY. Well, you are a very naive young man, I will tell you that.

Mr. KLEIN. Well——

Mr. CARMODY. You are a very naive young man.

Mr. KLEIN. Possibly so.

Mr. CARMODY. Yes, indeed. You see at one time or another I have sat in at hearings where the representative of the association who was there told the members their limitations with regard to further negotiations.

Mr. KLEIN. Yes. But then they also state to them that if they are not of that opinion, they are not obliged to follow the view of the association.

Mr. CARMODY. Oh, yes!

Mr. KLEIN. They consult and confer, just as the employees may consult and confer—nothing is stopping them.

Mr. CARMODY. Do you mean that the employees in Detroit are as well organized as the employers?

Mr. KLEIN. I do not know how they are organized, but there is nothing to prevent employees from organizing; but under the Constitution the employees cannot compel an employer against his will, as the Supreme Court has
255 construed it, to employ such person as he does not care to have work for him in his factory.

Chairman MADDEN. Do you think that Justice Hughes and Justice Holmes, who dissented in the *Coppage case*, if they had succeeded in getting three other justices to agree with them, would have torn down the foundations of this country?

Mr. KLEIN. It would have torn down a principle which many people believe, and which the Supreme Court then believed, and I believe still believe, is the law of the land, and the Constitutional doctrine or basis upon which we must operate.

Chairman MADDEN. And you think that those two great Americans would have had a part, if they had succeeded in getting three of their colleagues to gree with them, in really tearing down something fundamental?

Mr. KLEIN. As I say, Mr. Chairman, their conclusion was that if their decision was sustained, it would be a fine thing, just as the majority of the court, which was equally distinguished, or many of whom were equally distinguished, was of the opinion that it would destroy the constitutional foundations.

I think that they both had in mind the ultimate good of workmen generally and of their fellow citizens, just as you and I have.

Chairman MADDEN. Maybe they did, and maybe neither side took the thing as seriously as you take it.

Mr. KLEIN. Oh, I think they did.

256 Chairman MADDEN. Perhaps both of them were calm and dispassionate about the thing, and simply regarded it from the standpoint that if you take one view, that is one way of dealing with a troublesome situation, and if you take another view, that is another way of dealing with it; and you do not need to talk about tearing up the fundamentals of the Government. It is just a matter of human choice.

Mr. KLEIN. Oh, it is not that easy, Mr. Chairman, because they used very strong language in their opinion. I think that they gave the matter very serious consideration; in fact, they said they did give it very serious consideration; and their language was very strong language, where they say that if freedom of contract is to be preserved, the employer must be left at liberty to decide for himself whether such approach by the employees is consistent with the constitu-

tional duties of employment—that is in the *Coppage case;* and they talk about the interference that no government can legally justify in a free land.

That is rather strong language. That is not just a passing expression.

Chairman MADDEN. We will suspend at this time until tomorrow morning at 10 o'clock.

(Whereupon, at 5:20 o'clock p. m. November 6, 1935, the hearing was adjourned to Thursday, November 7, 1935, at 10 o'clock a. m.)

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Room 921, Federal Building, Detroit, Michigan, Thursday, November 7, 1935

Hearing resumed pursuant to adjournment, 10 o'clock a. m.

Before JOSEPH W. MADDEN, Chairman National Labor Relations Board; JOHN W. CARMODY, member of the Board; EDWIN S. SMITH, member of the Board.

APPEARANCES

G. L. Patterson, attorney, on behalf of the National Labor Relations Board.

Stevenson, Butzel, Eaman & Long, by *Victor W. Klein*, 2288 National Bank Building, Detroit, Michigan, on behalf of Fruehauf Trailer Company, respondent.

Charlton Ogburn, 120 Broadway, New York City, New York, on behalf of United Automobile Workers Federal Union No. 19375.

Hal H. Smith, 2900 Union Guardian Building, Detroit, Michigan, on behalf of Michigan Manufacturers Association, intervenor.

258 *Proceedings*

Chairman MADDEN. Gentlemen, the hearing will come to order. You may proceed, Mr. Klein.

Mr. KLEIN. We discussed some of the phases of the law at considerable length last evening. We have raised a number of other constitutional questions, as to the lack of due process by virtue of the nature of the proceedings under section 10, I believe it is, of the act—that is as to the rules of evidence, and the nature of the Board itself; that is,

acting as investigator, prosecutor, and judge, at the same time, I mean.

We have raised the question of our being deprived of the right, granted under the Constitution, of a jury trial.

Under the act, the Board, according to the provisions of the act, may order a workman reinstated, and also require under its order that his back salary be repaid to him. That would leave to the Board the determination of fact, involving sums of money in excess of the constitutional limitation, without giving the respondent an opportunity to have those questions determined by a jury, as we believe the respondent is assured under the Constitution.

Mr. PATTERSON. Would you like to try this case before a jury?

Mr. KLEIN. What is that?

Mr. PATTERSON. I say, would you like to try this case before a jury?

259 Mr. KLEIN. We cannot, under this statute.

Mr. PATTERSON. I would.

Mr. KLEIN. Well——

Chairman MADDEN. That is immaterial, is it not?

Mr. KLEIN. Yes.

Chairman MADDEN. As Mr. Klein says, there is no provision for a jury trial.

Mr. KLEIN. That is right. Then there are other questions that we raise, such as depriving the respondent, the employer, of the right of free speech; that is, if he were to criticize the operations of any union in his shop, he might be subject to a complaint on the ground that he was interfering with the organization of the union by his comment or criticism of the union, no matter how well founded that comment or criticism might be; and that would violate that constitutional guarantee.

Now, I do not desire to burden the Board with any further argument at this time. We would be very pleased to write a brief, if that would be helpful, or do whatever the Board desires in that connection, in that respect.

Chairman MADDEN. Well——

Mr. KLEIN. But we wanted to raise those questions.

Chairman MADDEN. Yes.

Mr. KLEIN. So that it will appear in the record that those questions have all been raised. I fully appreciate

260 that this Board has been appointed under the act, and I have assumed that the Board will act within its constitutional limitations on the interstate commerce phase.

The other questions go generally to the broader constitutional phase, and need not be further dealt with at this time.

As to any further procedure, we will be governed by the suggestion of the Board.

Chairman MADDEN. Well, I take it that the brief which we will give you permission to file—that is, if you desire to do so—following the conclusion of this hearing, will cover those points——

Mr. KLEIN. Yes.

Chairman MADDEN. In more detail.

Mr. KLEIN. Yes.

Chairman MADDEN. Well, then, your motion is overruled. I suppose you will want to note an exception.

Mr. KLEIN. Yes; we desire to note an exception to the ruling of the Board.

Chairman MADDEN. Your exception may be noted.

Mr. KLEIN. Now, as I understand it, the testimony that has been offered on the interstate commerce question is to be incorporated in the record on the merits, on the answer, just as though it had been taken in that order of procedure.

Mr. PATTERSON. Yes.

Mr. KLEIN. Is that Correct?

Mr. PATTERSON. By all means.

Chairman MADDEN. Yes. Certainly, it must be in there.

261 Mr. KLEIN. Yes.

Chairman MADDEN. Now, we want an orderly record here. I suppose the notation should be made, then, that this——

Mr. PATTERSON. If the Board please, may I offer a suggestion?

Chairman MADDEN. What is the suggestion?

Mr. PATTERSON. May I suggest this to the Board: I take it that the order which the Board has just made overruling the motion to dismiss, applies as a reaffirmance of the previous order entered by the Board overruling the motion in case VII–C–1.

Chairman MADDEN. The first case.

Mr. PATTERSON. Yes.

Chairman MADDEN. Yes.

Mr. PATTERSON. And applies also to the motion to dismiss filed in case no. VII–C–3.

Chairman MADDEN. Yes.

Mr. PATTERSON. Now, if I may, I would suggest that it be stipulated between counsel for the respective parties that all of the evidence heretofore introduced and admitted in evidence on the motion to dismiss, be incorporated in the record as evidence on the issues raised by the complaint and the answer.

Mr. KLEIN. That is correct. Of course we reserve our rights under our motion, and again renew all of those con-

stitutional and other objections, as a part of our an-
262 swer, without waiving any of those rights.

I believe that is the practice.

Mr. PATTERSON. I would like to make just one further suggestion if I may.

Chairman MADDEN. Yes.

Mr. PATTERSON. It was stipulated yesterday between counsel for the respective parties that we might stipulate regarding the character of the merchandise included in the 25 cars mentioned in the exhibit that was marked for identification, but not admitted in evidence yesterday.

That stipulation regarding the character of the merchandise in those cars, can later be placed in the record.

Mr. KLEIN. Oh, yes.

Mr. PATTERSON. Very well.

Chairman MADDEN. Yes. That stipulation is approved by the Board.

Mr. PATTERSON. Very well.

Chairman MADDEN. You may proceed.

Mr. PATTERSON. If the Board please, I would like to recall Mr. Vosler for just a few further questions.

Chairman MADDEN. Mr. Vosler.

EARL L. VOSLER, recalled as a witness for the Fruehauf Trailer Company, respondent, being previously duly sworn, testified further as follows:

Chairman MADDEN. This witness has already been sworn.

263 The WITNESS. Yes, sir.

Further cross examination:

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, as vice president of the Fruehauf Trailer Company, what connection have you had with the personnel problems of the Fruehauf Trailer Company since the first of the year 1935?

A. I have had a rather close connection, I should say.

Q. Is it not a fact that you are the executive vice president upon whom the job of handling personnel and industrial relations problems has been placed?

A. Yes, sir.

Q. So that, from the executive standpoint of your company, you execute the general policy of the company regarding personnel problems; is that correct?

A. With the aid of my associates.

Q. Certainly.

A. Yes.

Q. But the job ultimately devolves upon you, of passing the word down to the superintendents, and the foremen?

A. As a general thing, that is true.

Q. Well, is it not absolutely true?

A. The president of the company always has the right to pass anything over my head.

Q. Yes.

A. (Continuing.) Which he might do, on certain occasions.

264 Q. Yes. He may overrule you on a certain item of policy.

A. Yes.

Q. But he instructs you to pass the word down to the superintendents and the foremen, does he not?

A. That is the general procedure.

Q. Yes.

A. Yes, sir.

Q. Now, is it not a fact, Mr. Vosler, that the Fruehauf Trailer Company recently, within the last two months, has taken the position that the fifth wheel is a part of the trailer, instead of being a part of the tractor?

A. No, sir; it has not, that I know of.

Q. It has not?

A. (Continuing.) The railroad classification says that it is a part of the tractor.

Q. And did you not maintain, in your negotiations with the railroad companies, regarding undercharges, that it was a part of the trailer?

A. We assumed it to be that, always.

Q. And you took that position when you were talking about the undercharges, did you not——

A. Yes.

Q. With the railroads.

A. That is correct. We did.

Q. Yes. And now you are taking the position that
265 it is a part of the tractor?

A. Only because it has been ruled that way.

Q. I see. All right. When did you first find out, Mr. Vosler, that a large number of your employees were members of the union?

A. I do not know just exactly when it did come up.

Q. Well——

A. (Continuing.) It is something that has gradually grown over a period of years—a period of time.

Mr. KLEIN. Well, now, what do you mean by "a large number"? I think that is a double-barreled question.

Mr. PATTERSON. Well——

Mr. KLEIN. And I would like to have you make it a little more specific.

Mr. PATTERSON. I shall be very glad to.

Mr. KLEIN. If you will.

Q. (By Mr. PATTERSON.) When did you learn, Mr. Vosler, that Mr. Sprytzer was president of the union?

A. At approximately the time that we had a meeting with Mr. Sprytzer, and other members of the group.

Q. Well, when was that?

A. Oh, some time during 1934.

Q. Who else did you meet with besides Mr. Sprytzer?

Mr. KLEIN. Now, Mr. Chairman, and members of the Board: This testimony all relates to a time preceding the enactment of the Wagner Act. The Wagner Act
266 became effective on or about July 5th, 1935, and what transpired prior to that date certainly cannot have any direct bearing on or relationship to the charges here before this Board, which cover matters alleged to have taken place after July 5th, 1935.

For that reason any testimony antedating that time along this line, particularly, is objected to.

Mr. PATTERSON. Now, may it please the Board——

Chairman MADDEN. Now, just a moment. Do you mean that none of this background and past history, which would help us in determining motives, and so forth, may be looked at?

Mr. KLEIN. I think that must be determined after the Wagner Act became a law, if that is relevant and important.

Chairman MADDEN. The objection is overruled.

Mr. KLEIN. Exception.

Chairman MADDEN. The exception is noted.

Q. (By Mr. PATTERSON.) Now, can you tell us, Mr. Vosler, when this meeting was with Mr. Sprytzer, and who besides Mr. Sprytzer you met?

A. I do not know the date of it; no, sir. Mr. McDonald was present.

Q. That is the gentleman sitting at the end of the table here, is it?

A. Yes, sir.

Q. He was not an employee of yours?

A. No, sir.

267 Q. No.

A. (Continuing.) And there were one or two others—I think two others, but I cannot call them by name now.

Q. Were they employees, do you remember?

A. Yes.

Q. They were employees?

A. Yes, sir.

Q. Now——

Mr. KLEIN. If the Board please, without the necessity of constantly interrupting counsel, may it be understood that I am objecting to this entire line of testimony?

Chairman MADDEN. Yes.

Mr. KLEIN. Dealing with discussions with the employees, prior to July 5th, 1935.

Chairman MADDEN. Yes.

Mr. KLEIN. I do not want to have to be constantly interrupting counsel.

Chairman MADDEN. The record may indicate that it is all objected to, and the objection is overruled.

Mr. KLEIN. And an exception noted.

Chairman MADDEN. Exception noted.

Mr. PATTERSON. I might say to the Board and to Mr. Klein that the purpose of this particular inquiry is to establish the knowledge of the company that its employees were members of a union.

268 Q. (By Mr. PATTERSON.) Mr. Vosler, what detective agency did your company use to ascertain who of your employees were members of the union?

Mr. KLEIN. Now, just a moment. That is not a competent question.

Chairman MADDEN. Well, do you mean, now, that you are urging an objection additional to the objections which you urged heretofore?

Mr. KLEIN. Yes, Your Honor; I am making the additional objection that whether or not they used a detective agency, or had a personnel department, or how they got the information, is immaterial. The fact that they got it, and not how they did so, is the point.

Mr. PATTERSON. It is very important——

Mr. KLEIN. I do not think so——

Mr. PATTERSON (continuing). To find out how they learned who the union members were.

Mr. KLEIN. He may relate that he found it out, but I do not think that who related it to him, should be disclosed.

Mr. PATTERSON. Well, I would like to know who the detective agency was.

Mr. KLEIN. I do not think that is pertinent here, if the Board please.

Chairman MADDEN. Ask the witness a question that he can answer, namely, whether they did so.

269 Mr. PATTERSON. Very glad to.

Chairman MADDEN. And if it develops that they did, then we will see what further questions may be asked.

Q. (By Mr. PATTERSON.) Mr. Vosler——

Mr. KLEIN. Just a moment. Whether they knew—is that the question now?

Chairman MADDEN. How?

Mr. KLEIN. I do not understand the question. Is it whether they knew their men were members of the union?

Mr. PATTERSON. No, no. The question that I propose to ask, I will now state.

Q. (By Mr. PATTERSON.) Mr. Vosler, did the Fruehauf Trailer Company utilize the services of a detective agency to ascertain what employees of the company were members of the union?

Mr. KLEIN. I will ask the witness not to answer that question. I do not think that is pertinent to the issues before the Board. Whether they knew, or not, is another question.

Chairman MADDEN. Do you mean——

Mr. KLEIN. He may testify that they knew, or did not know.

Chairman MADDEN. Do you mean, that you are objecting to the question?

Mr. KLEIN. I am objecting to the question, and asking the witness not to answer it.

270 Chairman MADDEN. Well, your objection is overruled, and the witness is directed to answer the question.

Mr. KLEIN. Well, I am going to ask him not to answer the question, on the advice of his counsel.

Q. (By Mr. PATTERSON.) Will you answer the question now, Mr. Vosler?

A. On the advice of my counsel, I cannot do it, Mr. Patterson.

Q. Do you refuse to answer the question?

A. I respectfully decline to answer the question.

Q. Well,——

A. (Continuing.) On the advice of counsel.

Q. Will you say that you did not hire a detective agency to find out who among your employes were members of the union?

Mr. KLEIN. I also request him not to answer that question. He will testify whether or not he knew that these men were members of the union, but that is all that is pertinent to this examination.

Chairman MADDEN. Sit, down, Mr. Patterson.

Mr. PATTERSON. Yes; Your Honor.

Mr. KLEIN. I say that most respectfully, sir.

Chairman MADDEN. Will you sit down also, Mr. Klein.

Mr. KLEIN. Yes; Your Honor.

Chairman MADDEN. You are apparently taking a very serious step here.

271 Mr. KLEIN. I appreciate that.

Chairman MADDEN. I apparently do not understand just what you are driving at and I should like to give you an opportunity to explain further why this particular line of

questioning should be so objectionable that you here advise your witness in the face of all of the legal procedure with which you are familiar, and all of your legal experience, not to answer the question.

Mr. KLEIN. Well, if Your Honor please, such person might have been engaged under a confidential relationship, if there were such a relationship, and therefore——

Chairman MADDEN. Do you mean——

Mr. KLEIN. (Continuing.) The witness should not be compelled to disclose those facts—if there were such relationship.

Chairman MADDEN. Do you mean that the relationship between a detective and his employer is a confidential matter?

Mr. KLEIN. Anyone employed under a confidential relationship—not that we are admitting or denying the fact——

Chairman MADDEN. What are the confidential relationships which the law recognizes?

Mr. KLEIN. There is a relationship between individuals on that basis, which may have been the basis on which they were engaged, if they were so engaged.

Chairman MADDEN. Well, as a lawyer, tell me now
272 what are the confidential relationships which the law recognizes as confidential?

Mr. KLEIN. Well, we feel that because of this particular contract, if there was one, the relationship was made—that is the contract made, if there was one, which is neither admitted nor denied here at this moment, was made on that basis—if there was one.

Chairman MADDEN. Did any court or any other tribunal anywhere ever hold that the relationship between a detective and his employer was a legally protected relation?

Mr. KLEIN. Well——

Chairman MADDEN. (Continuing.) Which should not or could not be inquired into, at any time, anywhere?

Mr. KLEIN. We feel, Your Honor——

Chairman MADDEN. Would you be good enough, now, to answer my question?

Mr. KLEIN. I do not know of any such ruling, but I know that there was——

Chairman MADDEN. Yesterday, here, Mr. Klein, you seemed to take a very conservative view of the law.

Mr. KLEIN. Yes.

Chairman MADDEN. That the holdings of courts, and precedents, should be respected.

Mr. KLEIN. Yes.

Chairman MADDEN. And this morning you turn up,
273 and you apparently want to overturn all of the precedents.

Mr. KLEIN. No; I do not say it is a legal precedent, sir. I say that if there was such a relationship, and the contract between the parties was made on the basis of that confidential relationship, why, that relationship should be respected; and for that reason I have asked the witness not to answer, as to whether there was such a relationship or not, and not to disclose it if there was.

Mr. PATTERSON. Produce the agency, then, and I will cross-examine them.

Mr. KLEIN. That was my objection generally, that I believe that this Board is without jurisdiction, generally; and rather than——

Chairman MADDEN. Then what are you doing in here, Mr. Klein?

Mr. KLEIN. Pardon me?

Chairman MADDEN. Then what are you doing here?

Mr. KLEIN. Why, I am here to protect my client's rights the best I can, Mr. Chairman.

Chairman MADDEN. Well, you see you give the appearance of a sort of unreality to the whole thing. You are here, but you are not here.

Mr. KLEIN. Well, really we cannot help that. That is the position that we have been placed in.

Chairman MADDEN. Well——

274 Mr. KLEIN. We have got to be here, because we must preserve our rights, and we have no other way than to be present and preserve our rights.

Chairman MADDEN. Just be seated, please.

Mr. KLEIN. Surely.

Chairman MADDEN. Mr. Vosler, I realize quite well that you are acting on the advice of your counsel, but your counsel has advised you to act in complete contempt of this body, which is here representing the Government. Under the circumstances I shall have to ask you to withdraw not only from the witness stand, but from the hearing room.

Mr. PATTERSON. If the Board please, I would like to ask, before Mr. Vosler withdraws, that the Chairman of the Board postpone the execution of his order of withdrawal until I have asked him some other questions regarding the answer which he has filed in this case, and to which he has sworn.

It is very material to the presentation of the complainant's case, and there are certain other questions regarding the specific person who acted as the spy for this company among the employees; and I would like to have his refusal, if he does refuse to answer certain other questions regarding this same subject matter, in the record before he is withdrawn.

Mr. KLEIN. The witness, if he is to be asked some further questions, ought to be permitted to stay throughout the entire proceeding. I submit that is ordinary practice,
275 and that we have got to be here in order to preserve our rights. There is no other way; when a motion as to the jurisdiction is denied, there is not any other way in which we can raise that issue, until there is a hearing on the answer.

The request not to answer these questions is not made out of any disrespect for the Board, but it is made because of that relationship, if there was one——

Chairman MADDEN. Which you know perfectly well——

Mr. KLEIN. Well——

Chairman MADDEN. That no court has ever treated as a confidential relation.

Mr. KLEIN. Well; there are certain things——

Chairman MADDEN. You know perfectly well that if you were before a court that had power to punish for contempt, and you advised your witness not to answer on such flimsy grounds, which have no basis in law, as you perfectly well know, your witness would be punished for contempt, for refusing to answer the question, and you would be punished for contempt for giving him that sort of advice.

Mr. KLEIN. The question before this Board is originally one of jurisdiction. If that question is determined—if you wish now to determine that, there is a procedure by which that may be determined, as I understand it; that is as to whether or not this Board can compel the witness to answer the question.

276 Chairman MADDEN. Is he not, in respect to this Board, in the same position with reference to that question, as he is with reference to all other questions?

Mr. KLEIN. Only if this Board has jurisdiction, and not otherwise.

Chairman MADDEN. Well; is that not true of all the questions?

Mr. KLEIN. We need appear here only, or the witness can be made to answer questions only if this Board has jurisdiction.

Chairman MADDEN. Any question?

Mr. KLEIN. Any question.

Chairman MADDEN. All right.

Mr. KLEIN. On this phase of it, after we have introduced evidence on the question of whether or not we are engaged in interstate commerce, we having been before the Board to determine that preliminary jurisdictional question—and from that testimony it is clear in our opinion that this Board is without jurisdiction——

Chairman MADDEN. So you have decided this case, then?

Mr. KLEIN. We have no other way of presenting it, Your Honor; and it is not out of any disrespect, as you well know, sir.

Chairman MADDEN. No; I do not know.

Mr. KLEIN. The relationship you are asking him to disclose, if there was one——

277 Chairman MADDEN. Is what?

Mr. KLEIN. Is one that was made, if it was made, on a confidential basis between two people, the people involved.

Chairman MADDEN. On a confidential basis?

Mr. KLEIN. Yes.

Chairman MADDEN. On a basis which you know perfectly well, as a lawyer, has never been recognized as such in any court anywhere.

Mr. KLEIN. Well, sir, I know that if you had discussed things with anyone, on a confidential basis, and had been asked not to reveal them, you would not reveal them, if there were such a relationship. I know very well, sir, that you, too, would not disclose that relationship.

Chairman MADDEN. Do you mean that I would sit on the witness stand, and have a tribunal tell me to answer, and I would say that I refused to answer?

Mr. KLEIN. Before a tribunal without jurisdictional power, after you had undertaken not to disclose, if there was one, the confidential relationship, I think that would be more or less your duty, sir.

Chairman MADDEN. More, or less?

Mr. KLEIN. More your duty, sir. I used an unfortunate phrase. It would be your duty, and I think you would so act in Mr. Vosler's position. It is not out of any

278 disrespect to the Board at all, and I think you realize that, sir; but if the question as to the jurisdiction of the Board is open to be determined on the record as it now stands, if the Board wishes so to do, we are prepared to do so; and we say that most respectfully.

Chairman MADDEN. Counsel for the Manufacturers Association of the State of Michigan asked yesterday for the privilege of an intervention in this case, and that privilege was granted to a certain extent.

I should here like to have the advice of counsel with respect to the situation which now exists.

The WITNESS. Do you wish me to withdraw, Mr. Chairman?

Chairman MADDEN. No. You may sit down, Mr. Vosler.

Mr. HAL H. SMITH. Will the Board indulge me for just a moment, while I consult with my associate?

Chairman MADDEN. Certainly.

(A brief intermission followed.)

Mr. HAL H. SMITH. If the Board please, I think——

Chairman MADDEN. You are Mr. Hal H. Smith?

Mr. HAL H. SMITH. Yes, sir.

Chairman MADDEN. Proceed.

Mr. HAL H. SMITH. As the Board understood from our preliminary statement yesterday, our interest in this matter is of a general character, in that we desire that there be a full discussion of the problems that arise—the prob-
279 lems of law under this act, that arise under the act; and of course that makes necessary a full discussion of the factual situation on which those problems could be considered.

We have no knowledge of, and no direct interest in, the particular problem set up in the specific complaint that is under discussion. It follows from that, that we would be reluctant to see this case disposed of in any way that did not spread upon the record a complete, full, and fair statement of the controversy and of the facts, from which the legal questions could be developed, and settled insofar as the power of this Board could settle them.

It is with great regret that we disagree with counsel for the respondent as to the propriety of compelling an answer to the question. We had not regarded an inquiry as to the relationship between the employer of a detective, and the detective, as one that was protected under the law, as confidential.

On the other hand, we do not share in the sense of—opprobrium is perhaps a little strong word—that sometimes follows the word "detective." We know of no reason why any employer, desiring to know facts in his plant, should not have the right to employ a detective. The question is whether the detective develops honestly the facts, and whether they are finally honestly stated.

Having that view, of course, we would in an ap-
280 propriate case advise the employment of a detective to discover facts that could not otherwise be disclosed, and we would undoubtedly produce the detective then, to demonstrate the facts.

We see no reflection in any way in the employment of detectives. "Detective" and "spy" are two names that are used in a derogatory sense; but even a spy has an honorable place and a necessary place in time of war. It is not always that they are to be condemned.

We do question—and I say this most respectfully—the suggestion of the chairman of the Board as to the precise method that he would take to correct this situation.

Contempt of court is not ordinarily punished by removal from the courtroom, and from participation in the proceedings.

A cursory examination of the act would indicate, of course, that this Board did have power to punish for contempt, but we think that it should follow the ordinary course——

Chairman MADDEN. No, Mr. Smith.

Mr. HAL H. SMITH. Of legal procedure.

Chairman MADDEN. I think you must be mistaken about that, Mr. Smith. You see, we have no marshal, we have no sheriff, we have no bailiff. We simply come here and sit and attempt to go to the bottom of the facts in these cases.

Mr. HAL H. SMITH. Yes.

Chairman MADDEN. And we have no power to punish this man for contempt.

281 Mr. HAL H. SMITH. Well, I am not so certain but what, by an appropriate proceeding in a court of justice, you could punish him for contempt.

Chairman MADDEN. Well——

Mr. HAL H. SMITH. But I am afraid—pardon me.

Chairman MADDEN. Yes?

Mr. HAL H. SMITH. That the specific method which Your Honor indicated might rob this defendant—or the respondent, of substantial rights in the protection of its interests here.

Chairman MADDEN. Do you think that, in spite of the fact that the witness, on the advice of counsel, assists in making it impossible for us to get the facts, which you say you and your client would like to have us get, so that we can reach an intelligent decision in this case on this record? Do you think, in spite of that, that he should be permitted to continue to participate in this case, to protect his rights, when he denies to the Government the information which the Government wants to protect its rights?

Mr. HAL H. SMITH. Well, if that is Your Honor's view, I would say, yes, and for this reason: Let us assume that he has been guilty of contempt at this time——

Chairman MADDEN. Well, I would rather you would not use that expression, except by way of rather distant analogy.

Mr. HAL H. SMITH. I am using the extreme.

282 Chairman MADDEN (continuing). Because of course he knows, or at least his lawyer knows perfectly well that if he were in a court, which did have a sheriff, or a bailiff, or a marshal, and a jail, he would find himself right in the jail right away. He would not be sitting here; he would not be remaining here to take care of his rights, while he was denying to the State the right to get the facts which it needed to take care of its rights.

He would be sitting over yonder in the jail, thinking about how he could purge himself of his contempt right away.

Now, we do not have that power, and so he is not in that danger at all, and his lawyer is not in that danger at all.

Mr. HAL H. SMITH. Well, I do not offer any final opinion on that, Your Honor, but I think that the distinction would be one of time, and it might be entirely possible that this Board by application to a court, could enforce punishment for contempt, so that later he might find himself precisely in that situation.

But the remedy——

Chairman MADDEN. After he had succeeded in defeating the Government, and in taking good care of himself, then some time later perhaps——

Mr. HAL H. SMITH. The punishment might still be adequate.

Chairman MADDEN (continuing). He might get punished, after he had rendered this proceeding quite futile.

283 Mr. HAL H. SMITH. Well, even so, your Honor, the punishment might then still be adequate.

But the point that I make is that to remove him from the hearing room at this time I think might quite as effectively destroy the proceeding—and more effectively destroy it, even, than his refusal to answer, with permission to him to continue upon the witness stand.

It does not necessarily follow that his refusal to answer this precise question would make the position for the complaint of the government, impossible to prove.

But to return, and answer your question fairly, Mr. Chairman, I can say we also deprecate any situation in the proceeding, looking at it solely from our standpoint, that interferes with the full, complete, and fair discussion of the very interesting issues of fact and law that would be presented on this record.

Taking that position, of course, might be considerably of an embarrassment to the respondent, although counsel is concerned in protecting the rights of his clients; and his position may be entirely good, from that standpoint.

Mr. KLEIN. It may jeopardize the individual in question, if there were such. You know his life would be in jeopardy if we disclosed his name.

Mr. PATTERSON. That is an unfair statement.

Mr. KLEIN. I do not think so.

284 Mr. HAL H. SMITH. I might say——

Mr. KLEIN. I think it is the fact.

Mr. HAL H. SMITH. In what I say, I am not criticising counsel's position. He himself must determine that. All I can say is that we regret a situation that does not permit of

a full consideration of the important questions of law that are already apparent on this record.

Chairman MADDEN. You feel, do you, Mr. Smith, that you can still, consistently with your respect for your profession, and for the government, retain your status as an intervening party in this case?

Mr. HAL H. SMITH. Why, I think so; yes, Mr. Chairman. As an intervenor we would in filing our brief advise the Board of our views on the record as it then stood.

We of course had no knowledge that this situation would arise, and I think it is apparent from what I have said that in our own case we would have undoubtedly advised the witness differently.

Therefore as an intervenor, prepared to do all that we can to get the record complete, so as to present a fair statement of the facts, I should think that would be the only position we could take; and if we did anything else, we might impair our right to be an intervenor.

Chairman MADDEN. Very well. As everyone can see, this Board has had imposed upon it a very difficult matter.
285 We have come out here to ascertain the facts in this case. We have every inclination, of course, to be fair and considerate about the procedure by which we get those facts. I have the feeling that perhaps we owe it to the dignity of the Government, which has sent us out here, not to tolerate further the presence of either the witness or his counsel. On the other hand, while that might satisfy better the dignities of the situation, yet perhaps a thoroughly adequate picture of the facts can be obtained, even though counsel for respondent does pick over the questions and allow his witness to answer some questions, and refuse to answer others, although one question is just as relevant and just as worthy of an answer as another.

Mr. KLEIN. Will the Board pardon me for just one moment?

Chairman MADDEN. Yes.

(There was a brief conference between counsel for respondent and the witness.)

Mr. KLEIN. I again want to say to the Board that in taking this position there is not the slightest disrespect, but it is in consideration of the safety and welfare of the person who may be involved.

The pertinent question that is here involved, as to whether Mr. Vosler, or anyone connected with respondent, knew whether certain men or any men were union men, I think will be answered fully and fairly, so you will be fully and fairly advised what their knowledge was as to which
286 men were union men, if they did know, and which were not.

This only has respect to that one question, sir.

Chairman MADDEN. The Board will rule that you may continue, and your witness may remain.

At this time we will recess for five minutes——

Mr. PATTERSON. I would like to make just one statement preceding the recess, your Honor.

Chairman MADDEN. Yes?

Mr. PATTERSON. To refute the obvious fallacy of Mr. Klein's imputation here that the life of his operative might be endangered, it happens that we know just who it was, and he is still living, so far as we know.

Mr. KLEIN. Well, then, the answer to the question is not important.

Chairman MADDEN. We will recess at this time for five minutes.

(Whereupon a short recess was taken, after which the proceedings were resumed as follows:)

Chairman MADDEN. The hearing will come to order. You may proceed, Mr. Patterson.

Mr. PATTERSON. Now, if I understand the position of counsel correctly, he has now agreed to permit these questions to be answered.

Is that right?

Mr. KLEIN. To what questions does counsel refer?

287 Mr. PATTERSON. To the question that I originally put, regarding the employment of the detective agency.

Mr. KLEIN. I thought I had stated my position. I said that we would not want to disclose who any individual might have been, where we agreed with that individual that we would not disclose his name, being under that contractual relationship, and because he might be placed in jeopardy. We will disclose fully and fairly anything but his name; and in taking this position——

Chairman MADDEN. We are proceeding on the basis that you may ask your questions, and counsel for respondent will advise his witness, and the record will note that the witness has refused to answer, and counsel has taken the responsibility, with the witness, for the refusal to answer.

You may proceed on that basis.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, without including in the question that I am about to ask you, the name of any specific individual, what is the name of the investigating or detective agency that the Fruehauf Trailer Company employed to ascertain which of its employees belonged to the union?

Mr. KLEIN. I think that question falls within the same category, if the Board please. If you want to know whether he employed some agency, I think he may answer that ques-

tion; but I think that by disclosing the name, it leads right to the individual, and meets with the same objection,
288 that it involves the same private contractual relationship which had to do with the confidential character of the contract.

Mr. PATTERSON. This is the first time I ever knew——

Chairman MADDEN. Ask your question.

Q. (By Mr. PATTERSON.) Have you, Mr. Vosler—let me withdraw that.

Did the Fruehauf Trailer Company employ a detective agency to ascertain the names of its employees who had joined the union?

A. We employed a concern which supplied us a personnel man, as we considered him.

Q. When did you employ that agency?

A. The date is not clear.

Q. About when?

A. Some time in 1934.

Q. Was it the early part of 1934 or the latter part of 1934?

A. Probably the early part of the year.

Q. How?

A. Probably the early part.

Q. And the agency, I suppose, sent in an operative, or two operatives, or three operatives, did it?

A. As I said, it was personnel men, as we determined them—or termed them, who we believed we needed, just the same as every large factory and every large store needs
289 those men, to preserve our property.

Q. Yes, but you said a while ago that you hired them to find out which of your employees belonged to the union.

Mr. KLEIN. No; he did not say that at all.

Mr. PATTERSON. Oh, yes; he did.

Mr. KLEIN. That was your question, but he did not say that, at all.

Mr. PATTERSON. He said "yes."

Mr. KLEIN. No, no. He said they employed a personnel man from this agency, but he did not say it was to find out the men in the union. That was your question.

Mr. PATTERSON. Well, he answered "yes" to the question.

Mr. KLEIN. Oh, no; he did not.

Mr. PATTERSON. Then I would like to have the record read.

Mr. KLEIN. I want that question cleared up.

Mr. PATTERSON. Oh, yes.

Mr. KLEIN. Because he did not say that.

Mr. PATTERSON. You would like to correct his answer, now, would you?

Mr. KLEIN. Not at all.

Mr. PATTERSON. Well, then——

Mr. KLEIN. I would like to correct his misunderstanding whatever misunderstanding he may have in his mind, from your asking him a double-barreled question, although perhaps you did not intend to do so.

Mr. PATTERSON. All right. I will withdraw that
290 question—the last question.

Q. (By Mr. PATTERSON.) You did not hire this detective agency until 1934, did you?

A. We hired this party in 1934.

Q. Yes. And it was not until after the union started up again, that you fired him, was it?

A. I cannot say.

Q. Well, now, as a matter of fact you hired him for the purpose of checking up on the union activities, did you not?

A. Not exclusively, at least.

Q. It included that, did it not?

A. Perhaps; it may have.

Q. Yes. And is it not a fact that the detective agency you employed made periodic reports to you, or to your company, regarding the names and badge numbers of the men who belonged to the union?

A. This party made reports of union activities, among other things.

Q. So that the company at all times knew just what employees belonged to the union, did it not?

A. We knew part of them. I do not expect that we ever knew them all.

Q. I see. And you got that knowledge through the instrumentality of this detective agency, did you not?

A. We got it through our personnel department.
291 Q. Yes. Now——

Chairman MADDEN. I would like to ask a question right at this point.

Mr. PATTERSON. Yes, sir.

Examination by the bench:

Q. (By Chairman MADDEN.) These men who got that information for you, were they known in your plant as personnel men, or did they go under the guise of workmen?

A. For the most part, they worked in the plant.

Q. So that by their fellow workmen they were supposed to be just fellow workmen, were they?

A. That is true.

Q. And not to have other functions?

A. That is true.

Q. (By Mr. CARMODY.) Is that your understanding of a personnel man's responsibility in a plant?

A. Not the chief personnel man; no.

The CHAIRMAN. Do you have——

Q. (By Mr. CARMODY.) No; any personnel man in a plant, anybody who would go under the name of a personnel man, or be attached to a personnel department: Would you consider that part of his responsibility?

A. Those men are usually attached to the personnel department, I think.

Mr. CARMODY. All right.

292 Q. (By Chairman MADDEN.) Do you have a personnel department?

A. Yes, sir.

Q. Who is at the head of it?

A. Mr. Larson.

Q. Did he make these arrangements, that you speak of?

A. No, sir; he did not.

Q. Did he know that they were made?

A. I do not know whether he did or not.

Q. Who did make them?

A. I made them.

Q. Why would you not know whether Mr. Larson knew about them?

A. Well, I know he did not make them.

Q. You call those men personnel men?

A. Yes.

Q. And Mr. Larson was the head of the personnel department?

A. Yes.

Q. But you say you do not know whether he knew they were there, or not?

A. That is true.

Mr. PATTERSON. Is the Chairman through?

Chairman MADDEN. Yes. Proceed.

Q. (By Mr. PATTERSON.) It is a fact, is it not, Mr. Vosler, that you did not say anything to the personnel manager about the employment of this agency?

A. I did not discuss it with him.

293 Q. No.

A. (Continuing.) At the time of the employment.

Q. No. Did anybody else connected with the company discuss the employment of this detective agency?

A. Some of my superiors, I expect, did; yes, sir.

Q. The president of the company?

A. I expect so.

Q. The treasurer?

A. Yes, sir.

Q. The secretary?
A. Yes, sir.
Q. In other words, it was discussed in the board of directors——
A. Yes.
Q. Was it not?
A. Yes.
Q. Yes. And Larson did not know anything about it, did he—the employment manager?
A. Not at the time of the employment, at least.
Q. And is it not a fact that Larson did not know why some of those fellows were being discharged, when they were discharged?
A. I cannot answer that question.
Q. You do not know?
A. I cannot answer the question.
Q. Now, do you remember, Mr. Vosler—oh, I will
294 withdraw that question.
How many of those so-called personnel man were put into the plant to check up on the union activities, and other things as you say?
A. One man.
Q. Just one?
A. Yes, sir.
Q. And that fellow worked right down in the shop with the men, did he not?
A. Yes, sir.
Q. Yes. And that fellow was an officer of this union, was he not, at one time?
Mr. KLEIN. I do not think the witness should answer that question. It is subject to the same objection, as made before.
Mr. PATTERSON. Well, suppose we know his name. Will you let him answer the question then?
Mr. KLEIN. No. If you know it, that is up to you.
Q. (By Mr. PATTERSON.) Will you say that that operative was not a man by the name of J. N. Martin?
Mr. KLEIN. I ask the witness not to answer the question. If counsel knows the fact, why, I do not want the witness to breach that confidential relationship.
Mr. PATTERSON. Very well.
Mr. KLEIN. If there was such a relationship.
Mr. PATTERSON. Very well.
295 Q. (By Mr. PATTERSON.) Do you remember, Mr. Vosler, getting a report on the morning of the 8th of July that Mr. Peterson had resigned as secretary of this union?
A. No.
Chairman MADDEN. What year?
The WITNESS. 1935.

Q. (By Mr. PATTERSON.) You do not remember that?
A. No, sir.
Q. Who is Mr. Halpin?
A. Our plant superintendent.
Q. Did he know about this agency that you had hired?
A. I think he did.
Q. Was Mr. Halpin ever given any instructions by you, or any other member of the board of directors to break up this union?
A. No, sir.
Q. If he ever made that statement, was he telling the truth, that he was hired for that purpose?
A. Who?
Q. Halpin.
A. He was hired to run our plant. It had nothing to do with the union.
Q. Did you ever give Halpin instructions to discharge a union man because he was a union man?
A. No, sir.
Q. Did you ever give Rosenbusch instructions to
296 discharge a man because he belonged to the union?
A. No, sir.
Chairman MADDEN. Who was Rosenbusch?
Q. (By Mr. PATTERSON). Rosenbusch is a foreman, is he not?
A. Yes, sir.
Q. In what department?
A. The body department—the body shop.
Q. Who is Mr. Goodell?
A. Foreman of the frame shop.
Q. Did you ever tell Mr. Goodell to discharge a man because he belonged to the union?
A. No, sir.
Q. You are quite sure about that, are you, Mr. Vosler?
A. Yes, sir.
Q. Well, what was the purpose of hiring a detective agency, to find out what employes belonged to the union, then?
A. That was not the only duty that a man had, that we had in our employ. We had other things that we were interested in also.
Q. Well, to refresh your recollection a little bit, Mr. Vosler, about the time Peterson resigned from the union, do you remember of Peterson having gotten a raise of 5 cents per hour, in July?
A. No; I do not.
Mr. EDWIN S. SMITH. May I interrupt your line
297 of examination, to ask a question?
Mr. PATTERSON. Certainly, sir.

Examination by the BENCH:

Q. (By Mr. EDWIN S. SMITH.) To revert to a previous question, Mr. Vosler: Insofar as this operative working for the detective agency was there for the purpose of checking up on the union men, what use did you have in mind for just such information as he might give you?

A. We had had some trouble about a year or two earlier, with a little group of Communists, in the plant, and that was the thing that we were as much as anything else interested in.

Q. Well, what did you intend to do with the information about the alleged Communists?

A. We would have taken whatever steps were necessary if we had discovered Communists.

Q. Well, you have said hitherto here that this man was hired for the purpose in part of checking up on the members of this American Federation of Labor union?

A. Yes.

Q. I do not see the connection, quite, between that, and your charge that some of the employees were Communists.

A. I did not mean to say that any of our employees were Communists, at the present time, or within three or six months; but I said we did have that trouble a few months earlier.

Q. Well, do you mean that you did discharge cer-
298 tain individuals on the basis of the report of this agent, that they were Communisits?

A. No, sir; it developed before that time.

Q. So that this matter of Communism has nothing to do with, or had nothing to do with the employment of the detective agency for the purpose you have stated?

A. Except our interest in the whole situation.

Mr. EDWIN S. SMITH. I have no further questions.

Q. (By Mr. Chairman MADDEN.) Now, you have said, Mr. Vosler, that one of the purposes for which you employed this man was to give you information with reference to the union activities of these men.

A. In part.

Q. What did you want that information for; for what purpose?

A. Well, we did not want trouble of any kind started in the plant. We wanted to keep——

Q. You mean——

A. A steady flow of business.

Q. You mean you did not want a union in your plant; is that it?

A. Not necessarily that.

Q. Well, do you mean you did not necessarily want a union or you——

A. We met with the union people at various times. We never refused a meeting with the union people as long
299 as the N. R. A. Act was in effect.

Q. But you did want to know which ones of these men were union men, and you employed this man for that purpose?

A. That was not the only thing we employed him for.

Q. I understand that you employed him for other purposes as well.

A. Yes.

Q. But that was one of the purposes for which you employed him, as you have heretofore stated.

A. Yes.

Q. Now, I wish you would make it more clear as to what you wanted that information for?

A. Why——

Q. (Continuing.) And having gotten the information what you intended to do with it.

A. Why, we just wanted to know the things that were going on in the plant; and if they were members of the union, that was only incidental.

Chairman MADDEN. Proceed.

Mr. EDWIN S. SMITH. I have one more question.

Q. (By EDWIN S. SMITH.) Mr. Vosler, you say that as long as the N. R. A. was in effect, you met with the representatives of the union——

A. Yes.

Q. Is that correct?

300 A. Yes, sir.

Q. Then your meeting with them, was, I take it from the form of your answer, conditioned upon the fact that you felt that there was a legal obligation on you to meet with them?

A. That is right.

Q. And that legal obligation having been waived, as you saw it, by the passing out of the N. R. A., you no longer felt any obligation to meet them; is that correct?

A. That is right.

Mr. PATTERSON. Had you finished, Mr. Smith?

Mr. EDWIN S. SMITH. Yes.

Q. (By Mr. PATTERSON.) Mr. Vosler, was Mr. Halpin immediately under you in the management of the personnel department of this company?

A. Yes, sir.

Q. If Mr. Halpin said to J. L. Peterson on the morning after he resigned from the union, that Mr. Vosler was pleased to hear that Mr. Peterson had changed his mind about the union, and had gotten out, would you say that Mr. Halpin was telling the truth?

A. I do not recall discussing the matter with him, Mr. Patterson.

Q. You would not say that you had not discussed it with him, would you?

A. I say, I do not recall discussing the matter with him.

301 Q. All right. Did you know, Mr. Vosler, that Mr. J. N. Martin came down to the offices of the National Labor Relations Board in the National Bank Building, while this case was being investigated?

A. I do not know, sir.

Q. Are you quite sure about that?

A. Yes, sir.

Q. Did you know—or did you find out since that he had been down there?

A. When?

Q. Since the 27th of September, did you learn that Mr. Martin had been down there to the offices of the National Labor Relations Board?

A. I heard of it sometime, yes, sir, but I could not say exactly when.

Q. Who told you?

A. I had it in a statement.

Q. From him?

A. Yes.

Q. Yes. All right. Now, will you tell us then, since you have named the individual, who the agency was by whom he was employed.

Mr. KLEIN. I think the same answer should be made by the witness.

The WITNESS. I did not understand.

302 Mr. KLEIN. Do you want to answer that question or not, Mr. Vosler?

Chairman MADDEN. Just a moment. Are you now leaving it to the witness, to use his own judgment?

Mr. KLEIN. No, Mr. Chairman. I am advising him not to answer, and putting it up to him.

Chairman MADDEN. Do you mean this time that you want him to assume the sole responsibility?

Mr. KLEIN. No.

Chairman MADDEN. Well, then, I do not understand your statement.

Mr. KLEIN. I will assume equal responsibility with him; I am not trying to shift the responsibility. I will advise him not to answer the question. It gets back to the contractual relationship with the party with whom he dealt, not to disclose who they were.

Q. (By Mr. PATTERSON.) Now, will you answer the question, Mr. Vosler.

A. On the advice of my counsel, I respectfully decline.

Chairman MADDEN. I want the record to show——

Mr. PATTERSON. Let me ask you—pardon me.

Chairman MADDEN. I want the record to show at this time that the witness has refused to answer the question, and his counsel has advised him not to answer, on the ground that it would violate, not a confidential relation, but a
303 contractual relation.

Mr. KLEIN. Both, Your Honor. I do not want that to be misunderstood. The contractual arrangement—the contractual relation called for the confidential nature of the arrangement.

Chairman MADDEN. Do not these detective agencies generally hold themselves out, and put signs up in front of their doors, inviting clients?

Mr. KLEIN. That is true, but when they are sometimes retained by clients, they ask not to have their identity disclosed.

Chairman MADDEN. Are they ashamed of their clients?

Mr. KLEIN. I would not think so, no, sir, nor ashamed of their profession. But sometimes that is asked, and I have understood that was the relationship here. If I have been misinformed, I am sorry.

Mr. CARMODY. Do I understand, then, that you have assumed that that was the relationship?

Mr. KLEIN. That is what I understood the relationship to have been, sir.

Mr. CARMODY. Where did you get your understanding?

Mr. KLEIN. Through conversations, from conversations from people who would know about it.

Mr. CARMODY. From your client?

Mr. KLEIN. From my client.

304 Mr. CARMODY. I see.

Mr. KLEIN. If I have been misinformed——

Chairman MADDEN. In what form was the agreement with the detective agency——

Mr. KLEIN. I understood——

Chairman MADDEN. That it was not to be disclosed?

Mr. KLEIN. I have not seen the form of agreement, but I understood in a general way it was that they should not disclose them.

Mr. CARMODY. Let me ask the witness a question.

Q. Did you have any agreement with this detective agency that you would never reveal the fact that you had employed the agency? Was that a part of your contract with the agency?

A. We did not have any written contract with them, Mr. Carmody.

Q. Was there an understanding of any sort? Did the question come up?

A. I do not recall that it was discussed.

Q. You see, many detective agencies have applied to me, as a factory manager, to employ them, and they never said that I was not to tell anybody else, but they wanted me to tell somebody else that they were in the business and employed by me. I am surprised that such a situation should come up, in the case of this detective agency—or did it come up?

A. I do not think it did.

305 Mr. CARMODY. No. Well, where, then, is there any arrangement, contractual or otherwise, not to reveal this name——

Mr. KLEIN. I am informed——

Mr. CARMODY. Between the client, and the detective agency?

Mr. KLEIN. I had understood that there was.

Now, if there be none, the witness may answer.

Mr. CARMODY. The point is——

Mr. KLEIN. If there be none, the witness is at liberty to answer.

Q. (By Mr. PATTERSON.) All right, Mr. Vosler. Go ahead and tell us.

Mr. KLEIN. I had understood from the nature of the relationship, that there was such an understanding.

Mr. CARMODY. Well, 20 or 30 years' experience in the manufacturing industry would teach you something different about those relationships.

Q. (By Mr. PATTERSON.) Will you tell us then, Mr. Vosler, what the agency was?

A. They worked for the Pinkerton Agency.

Q. The Pinkerton Agency?

A. Yes, sir.

Q. Did you employ any other detective agency, other than the Pinkerton Agency for the same purpose in your plant during 1934 or 1935?

306 A. No, sir.

Q. How often did the Pinkerton Agency make reports to you of union activities?

A. Several times a week.

Q. Do you have copies of those reports?

A. Not at the present time, no, sir.

Q. Did you destroy them——

A. I destroyed them.

Q. As fast as they came in?

A. Yes.

Q. Do you have any of their reports?

A. I do not believe that I have any of them.
Q. How did you destroy them?
A. By getting rid of them immediately.
Q. Well, how did you get rid of them?
A. I burned them.
Q. Burned them?
A. Yes, sir.
Q. Where did you burn them?
A. Well, I burned them in the boiler at the plant.
Q. Did you carry them down there and burn them yourself?
A. I saw that they were destroyed.
Q. Did you make any records from them?
A. No, sir.

307 Q. Why, is it not a fact—Mr. Vosler, is it not a fact that Mr. Goodell, a foreman, and Mr. Rosenbusch, a foreman, walked up to several of your employees with a list of the badge numbers of every union man that you had checked up?

A. I do not think so.
Q. You do not think so?
A. No, sir. I do not know of any such thing.
Q. You would not say that that did not hapen, would you?
A. I cannot believe it happened.
Q. Do you mean to tell this Board, Mr. Vosler, that as fast as those reports came in, you threw them away?
A. That is what I did with them.
Q. You made no records from them whatever?
A. I may have made a mental record.
Q. A mental record?
A. Yes, sir.
Q. Well, you were sure to remember that Peterson had been down to the offices of the National Labor Relations Board, were you not?
A. I do not recall.
Q. How long after Martin was down to the offices of the National Labor Relations Board was it that you found out that he had been down there?
A. I do not remember that.
Q. Well, did this report come to you from Martin, or did it come from the Pinkerton Agency?

308 A. It came from the office.
Q. So a couple of days elapsed?
A. Probably.
Q. (By Chairman MADDEN.) Does that mean, then, Pinkerton?
A. Yes, sir.
Q. (By Mr. CARMODY.) Do they have a local office?

A. Yes, sir.

Q. (By Mr. PATTERSON.) Did you know that this man Martin came to the offices of the National Labor Relations Board on the pretext of making a statement that your company was discharging union men?

A. I did not know until after he had been there.

Q. Yes?

A. I said I knew he was there.

Q. And how long after you found out that Martin was there, did you fire Peterson?

A. I do not know.

Q. Who issued the order to fire Peterson?

A. I cannot say that.

Q. Did you?

A. I did not.

Q. Well, did you place the discretion in Mr. Halpin, to discharge the men?

A. He always has that.

Q. He always has had that?

309 A. Yes, sir.

Q. Did you——

Chairman MADDEN. Let me get this straight.

Mr. PATTERSON. Yes, sir.

Q. (By Chairman MADDEN.) Did Mr. Martin come to the offices of the National Labor Relations Board as a detective, and for the purpose of finding out whether or not other men from your plant had come to that Board on Government business?

A. We did not send him there.

Q. Did he go there as part of his duties as a detective for you?

A. I do not believe so.

Q. (By Mr. PATTERSON.) You accepted the report of his visit, did you not?

A. Yes, sir.

Q. Yes. And did not that report show that J. L. Peterson had been down there in the office at the same time?

A. I am not sure about that.

Q. Well, you read them all, did you not?

A. Yes; I read them.

Q. Well, now, did it show that?

A. I do not remember whether he was there or not; I cannot remember.

Q. Well, now, as nearly as you can remember it, you having burned the reports, or thrown them into the boiler,

310 what did the report say, that Martin made?

A. I do not remember.

Q. (Continuing.) Regarding his visit to the local offices of the National Labor Relations Board?

A. I do not recall what it said.

Q. You do not recall?

A. I do not remember.

Q. (By Mr. CARMODY.) Did you reprimand him for leaving his work and going down to the offices?

Mr. PATTERSON. This was in the evening, he said.

Mr. CARMODY. Oh, it was?

Mr. PATTERSON. Yes.

Mr. CARMODY. He did not leave his work, then.

Mr. PATTERSON. No.

Mr. CARMODY. All right.

Q. (By Mr. PATTERSON.) Did you know, Mr. Vosler, when Peterson was discharged?

A. I did not know it until after it was—until after it had been done, and he had left.

Chairman MADDEN. I want to get clear on this.

Q. (By Chairman MADDEN.) Did Martin come to the offices of our Board with Peterson?

A. I do not know, sir.

Mr. PATTERSON. I will state for the record, if the Board please, that Mr. Martin came to the offices of the Na-
311 tional Labor Relations Board on the evening of—I think it was September the 27th, at about eight o'clock. Mr. Martin came fifteen minutes, or some such matter, after Mr. Peterson had arrived. They did not come together. I will bring out testimony from Mr. Peterson regarding that, a little later.

Now, Mr. Vosler——

Chairman MADDEN. I should like, before we get off of this subject, to develop one thing further.

Mr. PATTERSON. Yes, sir.

Q. (By Chairman MADDEN.) You burned these reports, you say?

A. Yes.

Q. I should like to have you describe, for the benefit of the record, as near as you can remember, what was in those reports. That is, how they ran, and what did they say?

A. Well, there would be a report that So-and-so was complaining because of the wages that he was earning; or somebody else was complaining because of the hours that he was working—perhaps he was not getting as many hours as somebody else was; and there would also be references to what So-and-so had to say about certain union activities.

Q. And those reports came how often?

A. Several times a week.

Mr. PATTERSON. Were you finished, Mr. Chairman?

Chairman MADDEN. Yes.

Mr. EDWIN S. SMITH. I would like to ask another question.

312 Q. (By Mr. EDWIN S. SMITH.) You say that there were references in those reports to what So-and-so had to say about union activities?

A. Yes, sir.

Q. Just what do you mean by that? That seems like a very ambiguous statement to me.

A. Well, there would be a report that somebody was expecting to have two new members tonight, and that somebody else was doing thus and so. I cannot recall just exactly the language that was used; but that is the statement that was made.

Q. Well, you undoubtedly recollect at least one report, that said that a certain man whose name was mentioned expected to get a couple of new union members; is that so?

A. No, sir; I do not recall any particular name, Mr. Smith.

Q. You mean, he would simply say—the report would say that one of the workmen had said that he expected to get a couple of new members——

A. Yes.

Q. And the name of the workman?

A. Or the badge number; yes, sir.

Q. And would he also mention the names of the workmen whom he expected to get to join the union?

A. Not generally; no, sir.

Q. Sometimes he did?

A. I do not recall that he ever did.

313 Q. Do you have any other recollection of what was in those reports in connection with the matter of union activity?

A. No, sir; I do not recall.

Q. Did this man attend union meetings?

A. Yes, sir.

Q. Did he make a report to you on what went on at those meetings?

A. Yes, sir.

Q. Including the names of the persons who were present at the meetings?

A. He would mention some names, but I do not believe that he ever mentioned them all, however.

Q. He mentioned all that he could recollect—or all he could get hold of, I suppose.

A. As a general thing, it was only a case of there being so many members present that night. That was so far as it went.

Q. How full would the reports which covered the meetings, otherwise be?

A. Well, he generally went into some detail as to who the chairman was, what the chairman had to say, or what the remarks were of the organizer, or the representative of the American Federation of Labor; and that was just about as much as there was to it.

There was no serious business, as I recall it, that ever took place at any of them.

314 Q. And did you destroy those reports?

A. Yes, sir.

Q. The same as you destroyed the reports coming from the plant?

A. Yes, sir.

Q. On the activites in the plant?

A. Yes, sir.

Q. Why did you destroy all of those reports, Mr. Vosler?

A. Because I did not want them around.

Q. Why did you not want them around?

A. Well, I just did not think that it was advisable to have them around there.

Q. Well, I wish you would be a little more frank with me. Why did you not think that it was advisable to have them around there?

A. I figured that they could not serve any good purpose after they had been read.

Q. Well, you were afraid that somebody might read them, I suppose; is that it?

A. Well, among other things; yes, sir.

Q. Well, did you have fears that your fellow executives would read them?

A. I did not want anybody to read them.

Q. (By Chairman MADDEN.) It was not your own private matter, was it? I thought you said that the board of

315 directors, and the president of the company, knew about it?

A. Yes.

Q. And you were not ashamed of it, so far as they were concerned, were you?

A. No, sir. They never looked at them, however.

Q. Did I understand you correctly to say that this was an ordinary and usual business practice, what you were doing, or was it something that was rather extraordinary?

A. I do not think that it was unique, as far as that is concerned.

Q. How?

A. I do not think it was unique.

Q. Did I understand you to say that it was the common practice of manufacturers?

A. Quite so.

Q. (By Mr. CARMODY.) Are you a member of the Michigan Manufacturers Association?

A. Yes, sir.

Q. That is intervening here?

A. Yes, sir.

Q. (By Chairman MADDEN.) Where did you get your idea that it was the usual and common practice?

A. Through solicitation of the people.

Q. Do you mean, the detective agency?

A. Yes, sir.

316 Q. Those agencies, when they came there and solicited you would they ever tell you who their other clients were?

A. No, sir; they never did that.

Q. What did they tell you?

A. Why, they just went on to tell that they were serving many people in the vicinity, and they tried to set up their ability to do a service for us—just like anyone else would sell services.

Q. Did you ever hear anything about whether your workmen were suspicious that there was a detective, shall we say, in their midst?

A. No, sir; I do not recall anybody—anything ever coming up in that connection.

Q. (By Chairman MADDEN.) If the workmen ever had gotten the feeling that there was someone among them of that sort, what would the effect of that have been, do you think?

A. I really don't know.

Q. Do you mean that you have no idea about that?

A. No; I don't know.

Q. Wouldn't you guess that it would create a feeling of uncertainty and unrest and suspicion with everyone wondering whether the man next to him was the spy?

A. I don't know, Mr. Madden.

Q. The statement which you made here yesterday had much to do about the necessity for harmonious rela-

317 tions in the different groups of men working together.

Now, I suppose if there was just a rumor through the plant that someone, some man in the group was a spy, that that would not make for this harmony which is so important to keep commerce moving, would it?

A. I don't know what it would do.

Chairman MADDEN. Go ahead.

Mr. CARMODY. May I ask one question there, please?

The WITNESS. Yes.

Q. (By Mr. CARMODY.) We heard a good deal yesterday about fundamental Americanism and constitutionalism and a good deal about the danger that the workmen all over the

country are in if such an act as the Wagner Act were declared constitutional, and we heard a good deal about due process and about the rights to take a man's life and liberty and property away from him without due process of law.

Would you say if a man was discharged because he was mentioned in one of these secret reports, that that would be due process?

A. I don't know.

Mr. CARMODY. I don't know either, and I ask your counsel if a man would be given the benefit of due process if he lost his job by reason of one of these secret reports?

Mr. KLEIN. Yes. An employer is not required to have any one in the plant that he does not care to have.

318 Mr. CARMODY. So it is your idea that a man is given due process if he is discharged on information given in a secret report that he is not able to refute?

Mr. KLEIN. I think most men have been given due process when they are discharged on account of anything.

Mr. CARMODY. And you think they are furnished with due process if they are faced with the report?

Mr. KLEIN. They are not faced with the report.

Mr. CARMODY. With these destroyed reports? I can see that at least has made a mental impression on the witness.

Mr. KLEIN. We are taking a hypothetical case, I presume?

Mr. CARMODY. Yes; entirely. No other case could be taken here at the moment.

Mr. KLEIN. That is what happened in the *Adair case*. This exact charge was presented to the court, and the lawyer said the employers had the right to employ and discharge any such persons as they wanted to, and the court sustained that position.

Chairman MADDEN. Are you recommending that as a lawyer? Now, are you recommending it as good business practice?

Mr. KLEIN. Well, as far as business practice is concerned, I think our industrial relations can stand considerable improvement. They have gone forward a considerable ways and I think they can go a considerable ways further.

319 Mr. CARMODY. How far have they gone, if in the year 1935 it is the custom to employ detectives and call them personnel men and put them in the shop to work with the men and to report on the men? Industrial relationships—how far have they gone?

Mr. KLEIN. I think you have that in every large institution, sir.

Mr. CARMODY. And in spite of that you say we have made progress in our industrial relations?

Mr. KLEIN. Yes.

Mr. CARMODY. Backwards, perhaps.

Mr. KLEIN. No; I would not say so. I think the employees at the Fruehauf Trailer Company have been treated fairly generally. They have been given an audience if they had a grievance. Their wages are high compared with others in the trailer business, and any complaint they have as to their employment is given a fair hearing. (Laughter.)

Mr. PATTERSON. Now, who is making a stump speech?

Mr. KLEIN. Well, I was asked a question and I wanted to respond.

Mr. CARMODY. Go ahead.

Q. (By Mr. PATTERSON.) Mr. Vosler, with whom did you discuss the contents of these reports from Pinkerton?

A. Many of them I discussed with nobody whatsoever; in fact, that was true of most of them.

320 Q. And many of them you discussed with Mr. Halpin?

A. A few of them.

Q. Did you discuss the contents of any of these reports with Mr. Rosenbusch?

A. No, sir.

Q. Did you discuss it with anybody except Mr. Halpin?

A. No; I don't recall that I ever did.

Q. But the actual handling of the personnel was passed over to Mr. Halpin, wasn't it?

A. In a direct way.

Q. In a direct way. In other words, you passed the authority down to him to take any action that might be necessary from the information you got—on the information you got from the Pinkerton reports; right?

A. Well, essentially that.

Q. Well, can you tell me in any one instance, having received a report of union activities, what you did say to Mr. Halpin in connection with it?

A. I don't remember now what our conversation may have been.

Q. Well, do you remember of ever having had any conversation with Mr. Halpin after you got the report stating that the detective had been down to the National Labor Relations Board office to find out what it was doing and found Mr. Peterson down there; did you discuss that with Mr. Halpin?

Mr. KLEIN. Mr. Patterson, I presume the general
321 make-up of the reports was known by the superintendent.

Chairman MADDEN. Just a moment. Did you hear the question?

Mr. Reporter, will you read the question to the witness?

(Question read by the reporter as above recorded.)

A. I mentioned that to Mr. Halpin. Just what I discussed was, I can't recall.

Q. (By Mr. PATTERSON.) Do you remember the date that you mentioned it to him?

A. No; I don't.

Q. Well, now, as a matter of fact, didn't you tell Mr. Halpin to discharge Mr. Peterson?

A. No, sir.

Q. What did you tell him to do?

A. I did not tell him anything as far as that is concerned.

Q. Oh, I see. You left that up to Mr. Halpin, eh?

A. He had always the right to hire and fire men.

Q. All you did was report to Mr. Halpin that Mr. Peterson had been down to the National Labor Relations Board; is that right?

A. I probably mentioned that to him.

Q. Yes. Now, Mr. Vosler, one of the grounds of the motion which you filed in this matter is that the National Labor Relations Act interferes with your freedom of speech, isn't it?

Mr. KLEIN. That is a constitutional ground.

322 Mr. PATTERSON. Well, I am asking him whether he did not incorporate that in the motion.

Mr. KLEIN. Well, I take the responsibility for that. He would not know.

Mr. PATTERSON. That is right, isn't it?

The WITNESS. I don't recall what the motion said.

Mr. PATTERSON. Well, I will read it to you.

Chairman MADDEN. Well, it is in there. Go ahead. Let's see what you are driving at. I don't know what you are driving at.

Mr. PATTERSON. Very well.

Q. (By Mr. PATTERSON.) What do you think, Mr. Vosler, about the freedom of speech of your employees when you have got a detective standing down on the service line listening to what they say; what do you think about that as an individual?

Mr. KLEIN. Well, what he thinks—that is not a competent question.

Mr. PATTERSON. Well, he has expressed a lot of opinions about the interference of the freedom of speech of the employer. I would like to have his view on this.

Mr. KLEIN. Well, you can draw whatever legal conclusions you want from those facts. You are asking him legal opinions and general opinions that have no place in the record. They are matters of observation from the facts.

Chairman MADDEN. I think the witness' answer

323 would not be relevant.

Q. (By Mr. PATTERSON.) Now Mr. Vosler, after you got this report from Pinkerton about Peterson being down to the office of the National Labor Relations Board, did you ever talk to Mr. Martin after that?

A. No, sir.

Q. Did you ever call Mr. Martin in and tell him that you thought that might be going too far to be down sticking his nose into an investigation by the Government?

A. No, sir.

Q. No. You thought it was perfectly all right, didn't you?

A. I did not have anything to say to him about the matter.

Q. Now, Mr. Vosler, you verified the answer that has been filed in this case, haven't you?

A. Yes, sir.

Chairman MADDEN. I want to interrupt here.

Mr. PATTERSON. Very well.

Q. (By Chairman MADDEN.) Did you pay for Martin's services; did you pay Martin or did you pay Pinkerton, or did you pay both?

A. We paid both.

Q. How much did you pay Martin?

A. We paid him a regular rate per hour. I don't recall what that rate was.

Q. How much did you pay Pinkerton?

324 A. I believe it was $175 a month.

Chairman MADDEN. That is all.

Q. (By Mr. PATTERSON.) Mr. Vosler, Martin was hired, was he not, before Mr. Halpin was superintendent of your company?

A. I don't recall the dates, Mr. Counsel.

Q. Well, do you remember of having stated to Mr. Snyder, who was superintendent for your company a year or so ago, when he came back from a trip to New York—that you said to Mr. Snyder, "There is a fellow named Martin out there in the shop. Put him on the pay roll." Do you recall that?

A. No; I do not recall talking to Mr. Snyder about it.

Q. You wouldn't say that that did not happen?

A. No.

Q. Now, before preparing this answer or giving Mr. Klein the information with which to prepare it, with whom did you discuss the complaint that was issued against the Fruehauf Company?

A. Mr. Fruehalf.

Q. Which one, Mr. Vosler?

A. Mr. H. C.

Q. Anybody else?
A. Certain parts of it with Mr. Halpin.
Q. What parts with Mr. Halpin?
A. That had to do with these men.
Q. I see. And you discussed each one of these
325 individual men with Mr. Halpin?
A. Yes, sir.
Q. Did you discuss the discharges of these seven men with Mr. Rosenbusch?
A. No, sir.
Q. Did you discuss the discharges with Mr. Goodell?
A. No, sir.
Q. Just with Mr. Halpin?
A. Just with Mr. Halpin.
Q. You don't know whether he talked to their foreman about them or not?
A. I assume he did.
Q. You assume he did. Well, now, I notice that you admit firing Nick Trusch on the 15th of July; is that right?
A. I don't know the date. I assume that that is right.
Q. Well, I am reading from your answer. If your answer says the 15th, you admit that you discharged him on that day?
A. He was removed directly from service on that day along with other men during the same period. There were a good many men removed during that period.
Q. Well, now, you say here, "And denies that it has at all times since that date, to wit, July 15, 1935 refused to reemploy Nick Trusch but says that according to the records of the respondent that he has never made application for reemployment." Do you know why Nick was fired?
326 A. Nick was fired advocating, chiefly.
Q. Advocating what?
A. Advocating unionism, during the day.
Q. I see.
A. Among his men.
Q. And for how long a time had this been going on?
A. It had been going on for several weeks, at least 3 weeks.
Q. And was Nick ever cautioned about advocating unionism in the shop?
A. I understand he was; yes.
Q. By whom?
A. By his foreman.
Q. And that was Mr. Rosenbusch?
A. Yes.
Q. Well, he was discharged because he was advocating unionism; that was the reason?

A. Yes, sir.

Mr. KLEIN. During working hours, he said.

Q. (By Mr. PATTERSON.) Do you know what was put on his pay-off slip?

A. No; I don't know.

Q. It wasn't that, was it, the reason for his discharge?

A. I don't know.

Q. Well, now, you wouldn't rehire Mr. Trusch today, would you?

327 A. I don't know whether we would or not.

Q. It wouldn't do Nick any good to come back and ask for reemployment, would it?

A. I am not sure whether it would or not.

Q. Then why did you put in here that he did not come back and ask for reemployment, if you don't know whether you would rehire him or not?

A. As far as I know, he has never asked for it.

Q. Well, it wouldn't do him any good if he did, would it?

A. Well, I answered that before.

Q. In answer to the 11th paragraph of the complaint, the Fruehauf Trailer Company admits that it discharged Leonard Chaloux on July 5, 1935, but denies that he has since that time applied for reemployment. Is that right?

A. Yes, sir.

Q. That is the truth?

A. I believe it to be.

Q. And you go further, "But shows on information and belief that the National Labor Relations Act did not become effective until after the discharge of said employee, and for that reason in addition to the other grounds herein set forth, it has no application thereto."

Would the company re-hire Mr. Chaloux if he came back and asked for a job?

A. I don't know.

328 Q. Why was he fired?

A. Well——

Mr. KLEIN. Of course, all this—we think he was discharged prior to the effective date of the act, but some of these were after the act.

Mr. PATTERSON. There were two of them in which you raised that question.

Mr. KLEIN. Yes. What date the act was signed, I don't know.

Mr. PATTERSON. That is a question of law.

Mr. KLEIN. We can find that out.

Chairman MADDEN. It is your contention that the act took effect at the time that the President put his signature on it?

Mr. KLEIN. I just put that in as a pleading, but whatever the legal situation is, we can determine. We admit he was discharged at a certain hour during the day, and whatever effective date the act applied depends on the legal situation.

Chairman MADDEN. What was the hour, do you know?

Mr. PATTERSON. I think it was 11 o'clock.

Mr. KLEIN. We can furnish those facts.

Mr. PATTERSON. Well, for the purpose of the record, in reference to the contention of the complaint that this act was effective from a moment after midnight, July 4th, since no prescribed time was fixed—that is a question of law.

Mr. KLEIN. What is the name of this man?

329 Chairman MADDEN. Chaloux.

Mr. PATTERSON. Chaloux.

Mr. KLEIN. I think it was 2:30 when he was discharged.

Chairman MADDEN. The President usually signs those things about noon.

Mr. KLEIN. I don't know what the fact is, sir. It applies to two men. The others were after that time.

Mr. CARMODY. He might have been waiting for Mr. Chaloux to come to get one of the pens. I don't know.

Mr. KLEIN. Possibly.

Q. (By Mr. PATTERSON). Well, why was Mr. Chaloux discharged?

A. This was during the period when the plant was running at low ebb, and then for approximately three weeks there were more than 70 men let out, and the reason Mr. Chaloux was selected to be one of those was the fact that on this particular day his foreman smelled liquor on his breath.

Q. I see.

A. And at noon it was more noticeable than it was in the morning, and when it came to his attention he let him go.

Q. Why didn't you tell him that he was being fired because he had the smell of liquor on his breath?

A. I don't know what his foreman told him.

Q. Well, isn't it customary in your company to tell a man why he is being fired?

A. Yes.

330 Q. You don't know whether you would re-hire Mr. Chaloux or not?

A. No; I don't know.

Q. But you deny that he ever asked to be re-hired?

A. To my knowledge, that is true.

Q. Now, you also admit that Woolery Coonrod was discharged. It says, "Admits that it did discharge Woolery Coonrod, a fitter employed by it at its Detroit plant, and

has at all times since that date refused to reemploy him", and then you raised the question of the effectiveness of the act.

Why did you fire Mr. Coonrod?

A. The same conditions applied to Mr. Coonrod that day.

Q. Was he drunk?

A. I wouldn't say that he was drunk.

Q. Was that the first time that the foreman ever smelled liquor on Mr. Coonrod's breath?

A. I don't know.

Q. How long had he been with the company?

A. I don't know that offhand.

Q. Well, isn't it a fact that he has been with your company for 7½ or 8 years?

A. I think he was one who was there for several years.

Q. And isn't it a fact that Mr. Coonrod, when you operated a night shift, was foreman of the night shift?

A. Perhaps that is true. I don't know.

331 Mr. PATTERSON. Well, now, let's see how many more——

Q. (By Chairman MADDEN.) What would you think of firing a man who had been working for you for seven and a half years because you smelled liquor on his breath once and he had not been spoken to about it?

A. It would depend upon the circumstances, just what was going on at the time. Just the mere smelling of liquor in itself might not amount to a great deal, but it is what goes with that.

Q. Do you regard it as cause for discharge?

A. If a man was acting in any unusual way at the same time; yes.

Mr. CARMODY. It might go hard on the executives if they went around smelling each other's breath at 2:30 in the afternoon.

Mr. KLEIN. I don't think that is a fair statement.

Chairman MADDEN. What is the matter with that statement? Don't you know perfectly well that your executives do take a drink and they do smell of liquor on their breaths and they don't discharge them for it?

Mr. KLEIN. That may be, but I know in this instance that Mr. Vosler does not drink.

Mr. CARMODY. I meant no such reflection.

Mr. KLEIN. I do myself and I do not apologize for it.

Mr. CARMODY. So do I. Not in the daytime, but

332 after working hours.

Chairman MADDEN. And I take it that Mr. Vosler, even if he does not take a drink, would not discharge a company executive if he took a drink, at least not without warning.

Mr. KLEIN. No.

Q. (By Chairman MADDEN.) Tell us what else was the matter with Mr. Coonrod.

A. I think that was the objection on this particular day. He was a little more argumentative and caused more trouble there with his foreman. There was a little more discussion going on out there, but it was due to, or apparently due at least to his having——

Q. What was the discussion about?

A. I don't know. About their work.

Q. Where did you learn about the circumstances of his discharge?

A. From Mr. Halpin.

Q. When?

A. Since the time that this complaint has been filed.

Q. And Mr. Halpin told you that he smelled liquor on this man's breath and that the man was argumentative?

A. Yes, sir.

Chairman MADDEN. Nobody except us lawyers have a right to be that way.

Mr. KLEIN. Well, I was present when the foreman told us because I went out there to consult him about it and that is what he reported to me and Mr. Halpin besides, when I prepared the answer.

Mr. CARMODY. You were not present at the discharge?

Mr. KLEIN. No. I went out to find what the facts were according to this man. I wanted to get the facts as he related them.

Q. (By Mr. EDWIN S. SMITH.) What did you understand, Mr. Vosler, by the report that he was argumentative? What was he arguing about?

A. I expect it had something to do with his work, that he was arguing about; I expect so. I don't know.

Q. You expect, but you don't know about it?

A. No; I don't know the particular thing.

Q. In other words, you were satisfied with the explanation of Mr. Halpin's that the man had been arguing?

A. Yes, sir.

Q. Do you think that it is beyond the privilege of a workman to argue with his foreman about certain matters in connection with his work?

A. I think as a general thing when a foreman issues orders, a man should carry those orders out.

Q. Well, did he disobey any orders?

A. Just what happened I cannot tell, any more than the fact that there was a certain amount of argument going on between them, a little more, as I said, than usual.

Q. Well, you admit, then, that some argument is justified? You said "A little more than usual."

A. Well, I think that just a discussion concerning work would never be amiss.

Q. You mean you think it would be proper to discuss something in connection with the work assignment and so forth?

A. I think so.

Q. And for the workmen to expound an opposite view from the foreman in order to influence him to make some change?

A. Within certain limits, but when a man gets to arguing that would be something else.

Mr. EDWIN S. SMITH. That would be normal within certain limits.

Mr. KLEIN. As I understand, Mr. Vosler says the discussion is normal and proper and if the workman disagrees he must discuss it with his foreman and must tell him a better way to do it.

Q. (By Mr. EDWIN S. SMITH.) Well, what I wanted to find out was to discover what was said, if anything, beyond the plain fact that this man was argumentative, which resulted in his discharge.

A. That was the statement that was made, that he was argumentative.

Q. (By Mr. PATTERSON.) Had Mr. Coonrod ever
335 been warned not to come in the plant with the smell of liquor on his breath?

A. That is a notice that is served on all new men, employees of the company.

Q. Which was it, because he was argumentative, or because he had liquor on his breath?

A. I expect that both played a part.

Q. (By Chairman MADDEN.) What is that notice that is served on employees?

A. A little booklet that is handed to them when they are employed.

Q. What does it say to them about drinking?

A. I don't remember.

Q. Does it say that "Your foreman mustn't be able to smell liquor on your breath", or "you mustn't be under the influence of liquor", or, "you must never take a drink", or what?

A. I don't know what the phraseology of it is.

Q. (By Mr. PATTERSON.) You don't know anything personally about this discharge of Mr. Coonrod?

A. I did not personally do the discharging.

Q. Did you know that Mr. Coonrod went up to see Mr. Halpin after he had been discharged by the foreman?

A. I do not recall that I did.

Q. Would it surprise you to know that Mr. Halpin admitted to Mr. Coonrod that he was being fired because he belonged to the union?

336 A. Yes; I would be surprised.

Q. That would surprise you, would it?

A. Yes.

Q. At what time did the employees go to lunch back in July 1935, the department in which Mr. Coonrod worked?

Mr. KLEIN. I did not hear that question.

Q. (By Mr. PATTERSON.) What time was the lunch hour for employees in that department?

A. I imagine at 12 o'clock.

Q. At 12 o'clock. And what was the lunch period, a half hour or——

A. A half hour, as I recall it.

Q. Well, Mr. Coonrod was not discharged until 2:30 in the afternoon, was he?

A. I don't know, sir; the exact time.

Q. Now, then, you admit discharging William Milne on the 8th of July I think it is?

Chairman MADDEN. Let me interrupt there.

Mr. PATTERSON. Very well.

Q. (By Chairman MADDEN.) Why would you be surprised to learn that Mr. Halpin told Mr. Coonrod that he was being discharged for union activity?

A. Because Mr. Halpin never had orders to discharge anybody for union activities away from the plant.

337 Q. You and your counsel take the position that it would be perfectly right to discharge a man for union activities, do you not?

A. Again you raise a legal point.

Mr. KLEIN. Well, that is a point in the legal argument in this case. We said in demurring to the bill that even admitting those allegations—and we must in the nature of the proceedings admit those allegations——

Mr. PATTERSON. That is in your answer.

Chairman MADDEN. How would you advise your client? Suppose a client came to you and said, "I am against these unions. I think they are a nuisance. I propose to discharge a man for union activities."

What would you tell your client?

Mr. KLEIN. I think on the basis of the *Adair* case, I would say as a matter of law——

Chairman MADDEN. Would you be good enough to tell me how you would advise your client?

Mr. KLEIN. I would say: "If you want to know the legal situation, as a lawyer, in my opinion it is all right to do so."

Chairman MADDEN. Do you understand that they have a perfect right to discharge a man for union activities?

Mr. KLEIN. Well, but I think Mr. Vosler makes a distinction: For union activities in working hours and for union activities outside of working hours.

Chairman MADDEN. Do you think that, Mr. Klein,
338 that he has a perfect right to discharge a man for union activities?

Mr. KLEIN. He has never interfered with the organization as far as I know, and he has in his factory a number of union men, and he has hired union men. That is not the basis for continuing their employment, as I understand their policy, but they do use it as a basis of discharge when a man has been warned, as I understand it—when he has been warned not to agitate during working hours. But as I understand their policy they do not take a position one way or another.

Chairman MADDEN. Do you understand they have a perfect legal right to discharge men for union activities or for anything that they choose? And did you so advise your client? Now, you know that is a confidential matter, and you don't have to answer it.

Mr. KLEIN. Oh, I appreciate that, and I do not think you mean to take the attitude you apparently are taking.

Chairman MADDEN. How is that?

Mr. KLEIN. I don't think you mean to take the position toward me that you apparently lead this audience to believe that you are taking. I took the position on that confidential relationship, as you know, for one purpose, and the same as you as a lawyer might advise your client.

Chairman MADDEN. Well, if I did so advise my client I would know perfectly well that I was advising him something that was not the law, and you knew that at the
339 time you gave him that advice. You were in rebellion against the Government.

Mr. KLEIN. No; I was not in rebellion.

Chairman MADDEN. I will withdraw my other question.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, you say that you would object to union activities in the plant as distinguished from union activities outside; is that right?

A. I meant union activities taking place in the plant.

Q. You are not interested in those which took place outside?

A. No, sir.

Q. Will you tell this Board why it was, then, that you accepted these reports from this Pinkerton operative about who attended union meetings and what was said and what was done, if you were not interested in anything except what was going on in the plant?

A. He worked in the plant so we could know what was going on in the plant.

Q. And he worked outside the plant too, didn't he?

A. That was incidental to his work in the plant.

Q. Well, he was being paid for it, was he not; his agency was being paid for it?

A. I said it was incidental.

Q. (By Chairman MADDEN.) Are you drawing here a distinction between things direct and things incidental like you do with reference to commerce?

A. Not consciously.

340 Q. Well, as a matter of fact, it was an important part of his job to join the union, to pretend to be a loyal union member, and to attend union meetings and bring out reports, was it not?

A. He did those things; yes, sir.

Q. (By Mr. PATTERSON.) You didn't attempt to curtail his activities when he furnished reports of who went to the union meetings, and what was said and what was talked about, did you?

A. No, sir.

Q. You did not attempt to curtail his activities when he came down to the office of the National Labor Relations Board, and told you what happened down there, did you?

A. No, sir.

Q. I want to ask you about one or two more of these discharges. You admit that Milne was discharged, but deny that he has since that time applied for reemployment. Why was Milne discharged?

A. Milne was let out during this period of lay-off because he wasn't as fast a workman as some of the others that were retained.

Q. I see. Is seniority ever applied in your plant at all; are older men given preference?

A. Yes; but not to the exclusion of everything else.

Q. But where efficiency, as you determine it, is on an equal basis, does the man who has been there the longest stay the longest in the event of a lay-off?

A. That is right; yes, sir.

341 Q. Yes. And that is an established policy out at your plant, isn't it, that if you have five men in a department, and all of them are equally efficient in their work, and there has to be a lay-off, the youngest man goes first, is that right?

A. If everything else is equal; yes.

Q. Well, what do you mean by "everything else"?

A. I mean as far as his efficiency and his workmanship are concerned.

Q. I am assuming that, that these five men in a particular

department all do A number 1 workmanship so far as your observations are concerned, are perfectly satisfactory as workmen, and a lay-off is necessary; isn't it an established policy in your company to lay off the younger men first?

A. That is generally true; yes, sir.

Q. Now, is there anything else other than the efficiency as workmen that enters into your determination of which of those five should be laid off?

A. No.

Q. Now, you say that Mr. Milne was not as efficient as some of the other fellows in his department?

A. Yes, sir.

Q. I see. And is that the sole reason for discharging him?

A. Yes, sir; but we had to discharge certain men and that is the reason he was selected.

Q. Was anybody else laid off that day out of
342 Milne's department?

A. I don't know, Mr. Patterson.

Q. In what respect was Milne inefficient?

A. He was slow.

Q. Slow? Is that all?

A. That is all I know of.

Q. Now, let us go over to Mr. Beck. You admit that he was discharged and deny that he applied for reemployment; is that right?

A. That is right.

Q. Why was Beck discharged?

A. He was among several that were laid off in that department within the period.

Q. Within what period?

A. Oh, two or three weeks.

Q. You mean the period that you set forth in the answer, Mr. Vosler, as extending from June 25 to July 21 of this year?

A. Yes.

Q. And was the reason for his lay-off the fact that you were reducing the force?

A. Yes, sir.

Q. Any other reason?

A. Well, the particular reason he was selected was because of his accident record.

Q. His accident record?

343 A. Yes, sir.

Q. What was the matter with that?

A. Well, he had four accidents within a period of approximately two months, as I remember. I have forgotten the exact date. I think I have it here.

(Witness produces paper.)

He had accidents in June 1934, December 1, 1934, December 26, 1934, February 1, 1935, and February 4, 1935. The foreman simply considered him an unsafe man.

Q. Did you tell him that when you discharged him?

A. I really don't know.

Q. The record does not show that you did, does it?

A. I don't know.

Q. What was the work that he did?

A. I am not sure just what he did do.

Q. Well, certain jobs in your plant are more hazardous from the standpoint of accidents than others, aren't they?

A. Not noticeably so, I would not think.

Q. Well, now, isn't it a fact that some workmen in your plant are working at machines or doing a kind of work where the susceptibility to accidents is much greater than elsewhere, from the very nature of their work?

A. We do our very best to guard against anything of that sort.

Q. Certainly, but from the very nature of their work, isn't there a greater likelihood of there being an
344 accident to men doing certain kinds of work in your plant than to others?

A. I don't know about other shops.

Q. No. I mean different operations in your own shop.

A. A man working at a bench is not as susceptible to accidents as a man working at a drill press.

Q. Certainly. Now, let me ask you this: When there is a lay-off at your plant because of a reduction of force, who is it that determines that there shall be a reduction of the working force?

A. Mr. Halpin.

Q. The superintendent?

A. Surely.

Q. In other words, if he thinks that there should be a reduction in force who then would he communicate with?

A. With his foreman.

Q. Well, now, do you have an employment officer at your plant?

A. Yes.

Q. Who is in charge of the employment and the discharge of men? Isn't that right?

A. No; he does not have charge of the discharge of men.

Q. But he does have charge of the employment?

A. Employment in connection with the foremen.

Q. (By Mr. CARMODY.) He employs on requisition. In other words, he does not employ on his own initiative,
345 but upon requisition from the department head; is that true?

A. Yes.

Q. (By Mr. PATTERSON.) Now, then, your employment manager is the man who keeps the records of all the employees in the plant, doesn't he?

A. Yes.

Q. And isn't he the first fellow who is notified of a reduction in force, a general reduction in force, or of a general increase in force, to hire additional men?

A. I don't know that he would be in case of a discharge or a reduction.

Q. Well, might he not be taking men on while the company is reducing forces if he were not advised that the company contemplated a reduction of forces?

A. Well, he usually hires from orders that he gets from Mr. Halpin or the foremen.

Q. But he wouldn't necessarily know that the company was reducing forces to the extent of 75 or 100 men in the course of a couple of weeks?

A. He would know it as it happened.

Q. He would not be notified before that?

A. I don't know whether he would be or not.

Q. Well, who could tell us that? Could Mr. Halpin?

A. Well, I expect he could.

Q. Well, all I am trying to get at is: Isn't it a
345 policy of your company that the superintendent in charge of personnel would tell the employment manager when the company contemplated or was about to reduce the working force?

A. Why, I think his information would go to the foremen primarily.

Q. It would go to the foremen primarily. Now, then, you admit that Mr. Weinmann was discharged—oh, by the way. Withdraw that for a minute.

You deny that Mr. Milne has since applied for reemployment.

A. So far as I know; yes, sir.

Q. Would you hire him if he did?

A. We hired him once after he was laid off, the year before.

Q. Will you answer the question please?

A. I don't know whether we would or not.

Q. Well, then, it wouldn't have done him any good to make application for reemployment, would it?

A. I don't know.

Mr. PATTERSON. No.

Mr. KLEIN. Mr. Voeler did not say "No." He said he would not know until the man applied.

Mr. PATTERSON. I am just asking him. He said he does not know whether it would have done him any good or not.

Q. (By Mr. PATTERSON.) Now, you admit you discharged William Weinmann on July 15. Why did you discharge Mr. Weinmann?

A. He was in the lay-off.

347 Q. How long had he been there?

A. About two years.

Q. About two years. Was there any other reason for his discharge except that he was in the lay-off?

A. That is all.

Q. His work was all right?

A. Well, he was one also who was inclined to discuss union activities around the plant.

Q. Oh, I see. That entered into the consideration of discharging him, didn't it?

A. Yes, sir.

Q. Well, then, you were not quite right when you denied here in toto that you discharged Mr. Weinmann because of union affiliation, and activity, were you?

A. Not union affiliation.

Q. Activity?

A. Activity inside the plant.

Q. But you denied the paragraph of the complaint alleging—paragraph 24, you deny in its entirety, that he was discharged because of his union affiliation and activity?

Mr. KLEIN. It is my fault if that is so. It was intended to be a denial of discharge for union activity as such alone.

Mr. PATTERSON. I see.

Chairman MADDEN. Is that what you mean by all these denials?

Mr. KLEIN. No, no. There are three or four cases

348 where I think Mr. Volser testified where that may have been one of the factors, where a man persisted in unionizing during working hours. That may not have been the exclusive reason, but it may have been one of the factors, unionizing during working hours, and that was not a discrimination, as I understood it, but that was the fact as Mr. Vosler stated it. Not because he belonged to a union but because he agitated unionism and argued with a man during working hours after he had been warned.

Mr. PATTERSON. It does not say that in your answer.

Q. (By Chairman MADDEN.) After he had been warned?

A. As I understood it.

Q. By whom?

A. By his foreman.

Q. (By Mr. PATTERSON.) Who was his foreman?

A. Mr. Rosenbusch.

Q. (By Chairman MADDEN.) Well, was your rule against any mention of the union inside the shop and during work-

ing hours, or was it against time wasting discussion, or what?

A. They were not expected to discuss the union during working hours.

Q. At all?

A. Yes, sir.

Mr. KLEIN. Because it would create lack of harmony during working hours and that is the reason we put it in that statement yesterday, because it would stir up hard
349 feelings. If a man did not want to join a union and the other fellow would say "I want you to join the union", it would create lack of harmony during working hours, and hamper the work.

Q. (By Chairman MADDEN.) So in effect your rule was no mention of the union during working hours; did the men know that?

A. Well, simply because he might mention, "I belong to the union", during working hours did not mean that he was going to be discharged, but when they took time to discuss the matter with other men, then we felt it was ground for discharge, and they knew that.

Q. And they knew it because each of their foremen had told them?

A. As it came up he told them.

Q. (By Mr. EDWIN S. SMITH.) Well, do I understand that in the case of each of these men, a part of the cause of whose discharge, you say, was that they were carrying on union activities during working hours—was each of them warned on any previous occasion prior to their discharge?

A. I think so, as I understand it. There were only two of them, as I remember it, were.

Q. (By Mr. PATTERSON.) Who is that, Mr. Weinmann and Mr. Trusch?

A. I think those were the ones; yes.

Q. (By Mr. EDWIN S. SMITH.) Well, you mean that it had been reported by Mr. Halpin that they had been previously warned?

350 A. Yes, sir.

Q. (By Chairman MADDEN.) Not that they had talked unionism or mentioned the union, but that they had talked too much, that is, to the point of wasting time, and wasting the time of other men?

A. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) Is there any rule against conversation of any sort during working hours among the men?

A. I do not understand your question.

Q. I say, is there any rule of the plant that there shall be no conversation among the men during working hours?

A. No, sir.

Q. It is just certain kinds of conversation that there would be an objection to?

A. Well, when it became annoying in some cases, as it did in some cases to others, we certainly felt we had the privilege of discharging them.

Q. How did you know about these men, that their conversation on the subject of unionism was annoying to others?

A. Well, I don't know in this particular case that it was annoying to others.

Q. Well, you said they were agitating unionism and the only definition you gave me of that is a conversation with other workers in a way to cause annoyance. What were they discussing, if that wasn't the case?

351 A. Well, they were apparently discussing it with other men. Now, just what was said and how much time was taken in it, I don't know.

Q. Well, how did you know or how did Mr. Halpin know they were discussing it?

A. I don't know how the information got to him, whether the foreman overheard it or how it happened. I am not prepared to say.

Q. Was that part of the information that Mr. Martin brought to you, as to where the men were talking unionism among themselves during working hours?

A. On some occasions, he did.

Q. (By Chairman MADDEN.) Where men work together in a group, say, a riveting gang, they talk a great deal about all sorts of things, I suppose; that is, there is no ban on conversation?

A. I expect there was a good deal of union talk went on that we did not know anything about.

Q. Did it hurt, as far as you know? Did it slow up your work as far as you know?

A. In some cases, perhaps; yes.

Mr. CARMODY. May I ask one question here?

Chairman MADDEN. Yes.

Q. (By Mr. CARMODY.) Do you keep individual efficiency records of the workmen in your plant?

A. No, sir.

352 Q. You keep no record of a man's production as against a standard or something of that sort?

A. No; we don't.

Q. How do you determine a man's efficiency?

A. That is left with the foremen to determine.

Q. How many men does the foreman supervise?

A. Well, in the case of the steel shop, he has about sixty men there.

Q. And he is the sole judge of their efficiency?

A. Yes, sir.

Q. May I ask another question there? Have you ever heard that these undercover men or detectives, as they have been referred to here, stir up trouble in a plant to keep themselves employed and their firm employed?

A. No; I never have.

Q. You have never heard that?

A. No, sir.

Q. And you are familiar with the activities of these men in industry?

A. I know that they are in industry.

Q. And you have never heard that it is a matter of record that they actually create situations, they actually even get men to join a union in order to get them discharged?

A. No; I did not know that.

Mr. CARMODY. Well, that is all.

853 Mr. EDWIN S. SMITH. Well, may I ask a question on that point?

Chairman MADDEN. Yes.

Q. (By Mr. EDWIN S. SMITH.) Is it conceivable to you, Mr. Vosler, that a man such as Mr. Martin, hired as an ordinary workman and passing himself off as such, could mingle with his fellow workmen at union meetings, could enjoy their confidence to an extent that he could listen in on conversations when they were discussing the union with other employees, possibly in the plant—could he do all those things and not himself be a contributing factor in an increasing interest in the union in the plant?

A. I don't know whether he could or not.

Q. You don't know. Well, he would have to be pretty clever to do it, wouldn't he?

A. I really don't know, I am sure.

Q. (By Chairman MADDEN.) What did Martin do? What was his work in the plant?

A. If I am not mistaken, he was in the maintenance department most of the time.

Q. (By Mr. CARMODY.) What was the object of putting him in the maintenance department?

A. That happened to be what he did—I mean, that was his line of work.

Q. He wasn't put in there because the maintenance

854 men roam pretty well over the whole plant and it is very difficult to tie them down to a job and to tell whether they did anything or not.

A. No, sir.

Q. It is customary to put them in that department because the loose routine enables them better to roam. I did not know whether you knew that. You did not do that?

A. No, sir.

Q. He is a good maintenance man?

A. Yes.

Q. In what branch of maintenance work?

A. I do not know.

Q. You knew when you hired him that he was a maintenance man?

A. That is the way we hired him.

Q. But you did not make an examination to find out?

A. No, sir.

Q. Do you know now in what part of maintenance work he is most efficient?

A. No; I don't.

Q. Was the cost of his work charged to maintenance in the plant?

A. Yes, sir.

Q. It wasn't charged to the job that he was doing; detective work?

A. No; just overhead.

355 Q. It shows on your books as a maintenance charge?

A. Yes, sir.

Q. (By Mr. PATTERSON.) Mr. Martin isn't any longer out at the plant?

A. No, sir.

Q. How long has it been since he left?

A. I don't know.

Q. Well, wait a minute. Don't you know that about a week ago last Monday his departure was dramatized by Mr. Halpin, by claiming that he was fired?

A. I don't know now just what happened.

Q. You don't know?

A. I know he is gone.

Mr. CARMODY. Is Mr. Halpin here?

Mr. PATTERSON. I don't know the gentleman.

Mr. KLEIN. No, sir.

Mr. CARMODY. Will he be here? Has he been subpoenaed?

Mr. PATTERSON. He has not been subpoenaed by the complainant.

Chairman MADDEN. Well, so many of Mr. Vesler's answers have referred to Mr. Halpin as the one who knew, you will surely have him in, will you not?

Mr. KLEIN. I will determine that as the case proceeds.

Mr. PATTERSON. I should think that if that were the testimony——

356 Mr. CARMODY. Well, I think we will want to hear Mr. Halpin. I think you may be thinking along those lines.

Mr. KLEIN. All right. Very well.

Q. (By Mr. PATTERSON.) Now, can you tell me why Mr. Peterson was discharged?

A. Well, Peterson was a man who has been with us for quite a long time.

Mr. CARMODY. Peterson? Excuse me.

Mr. PATTERSON. Yes; J. L. Peterson.

Mr. CARMODY. Go ahead.

A. (Continuing.) He had assumed a belligerent, and, as his foreman described it, a bull-headed attitude.

Q. (By Mr. PATTERSON.) Who was his foreman?

A. Mr. Rivenbark. And the immediate cause of his discharge was his failure to handle a job as he was told to do it and as he would afterwards tell his foreman he had done it.

Q. Tell me what that job was.

A. Well, we had several trailers come through there, some of which had temporary tires applied to them, and he was to later change tires on those units, which he neglected to do.

Q. Isn't it a fact, Mr. Vosler, that one trailer went out with tires on that had more plies in them than what they were supposed to have had, and that is the peg upon which you are now hanging your hat?

A. I undersand there were two trailers that that happened on.

357 Q. And that makes a total of how many tires?

A. Eight tires.

Q. And the tires that were on gave the customer a couple of more plies for his money than he was supposed to have got?

A. That is right. There was considerable cost there involved.

Q. (By Mr. CARMODY.) How much cost?

A. I don't know just what the figures are.

Q. Could you bring those figures in?

A. I think so.

Mr. PATTERSON. I think I can show that. About $6.15.

Q. (By Mr. PATTERSON.) Now, Mr. Vosler, when did that happen?

A. I don't recall the date that it happened. I don't know whether I have it here or not.

Q. I wish you would look for that.

A. No; I don't have the actual date that this happened.

Q. You don't have that?

A. No, sir.

Q. Now, that one mistake on those two trailers, plus the fact that Mr. Peterson was belligerent, as you say, was the reason he was discharged?

A. Yes, sir.

Q. Has he ever been warned about being belligerent?

A. I don't know just how much conversation his foreman may have had with him about it, but I don't think this was the first time that that had come up.

358 Q. Doesn't it strike you as rather strange that his discharge should take place right after he came down to the office of the National Labor Relations Board?

A. No, sir.

Q. It does not strike you as strange at all?

A. No, sir.

Q. Doesn't it strike you as strange that he got a five cent per hour increase after it was reported to you and Mr. Halpin that he had resigned from the union?

A. I don't recall anything about that.

Q. Did you know anything about the conversations that Mr. Halpin had with Mr. Peterson about the union?

A. No, sir; I do not.

Q. Did Mr. Halpin tell you anything about them?

A. No, I don't think so.

Q. You left that up to him entirely?

A. If there was any conversation it was between them.

Q. But you now say that Mr. Peterson being down to the office of the National Labor Relations Board had nothing to do with his being discharged?

A. Not as far as I know.

Q. Oh, not as far as you know. I see. Did his membership in the union have anything to do with his discharge?

A. No, sir.

Q. Did his union activities have anything to do
359 with his discharge?

A. No, sir.

Q. How long has he been working for your company?

A. About seven years, I think.

Q. And he was a subforeman when he was fired, wasn't he?

A. Yes, sir.

Q. Yes; and his services during the past six, seven, or eight years have been all right up until just a little while ago, haven't they?

A. Probably on the whole they were.

Q. Yes.

A. But men sometimes get to that point after long service, that they become difficult to handle.

Q. Well, he suddenly became unsatisfactory, didn't he?
A. Yes, sir.
Q. You did not fire him because of a lay-off, did you?
A. No, sir.
Q. You fired him because he was unsatisfactory?
A. Yes.
Q. (By Chairman MADDEN.) What did this man Larsen, this personnel man—does he have anything to do with these labor relations in the sense of reviewing arbitrary discharges and things of that kind?
A. No, sir; he has not.
Chairman MADDEN. He has nothing to do with that at all.
360 Mr. CARMODY. I wonder if the chairman won't find when he has analyzed this employment situation out here that pretty generally the employment manager is a clerk, that he does not carry the weight here that he does in other parts of the country where personnel management has reached a high standard.
The WITNESS. That is pretty much the case.
Mr. CARMODY. Yes; that is pretty generally true in Detroit, I think, Mr. Chairman.
Mr. PATTERSON. Mark that the next exhibit of the complainant.
(The document referred to was marked "Complainant's Exhibit No. 14", for identification.)
Q. (By Mr. PATTERSON.) I hand you, Mr. Vosler, what has been marked "Complainant's Exhibit 14", and ask you whether that is a copy of the pay-off slip that was given to Mr. Peterson?
A. It appears to be.
Q. Whose initials are here on the bottom?
A. Mr. Rivenbark's and Mr. Halpin's.
Mr. PATTERSON. I offer this in evidence.
Mr. KLEIN. May I see it?
Mr. PATTERSON. Yes; surely.
Mr. KLEIN. No objection.
Chairman MADDEN. It may be admitted.
(The document previously marked "Complainant's Exhibit No. 14", for identification, was received in
361 evidence, Witness Vosler.)
Q. (By Mr. PATTERSON.) You notice here on this slip, Mr. Vosler, it says, "Given ——— days' notice." It is customary to give your men a few hours' or a few days' notice, isn't it?
A. No, sir.
Q. It is not?
A. Not in case of discharge.

PAY OFF SLIP

EMPLOYEES COPY

J. L. Peterson — NAME
421 — CLOCK NO
Assembly — DEPT.

PAY TO

A M / P M _____ 19 — DATE

GOOD ____ FAIR ____ POOR ____

GAVE 10-10-55 DAYS NOTICE

TOOLS O. K.

BADGE O. K.

REASON Unsatisfactory

REHIRE YES NO

FOREMAN | SUPT | ENG | PAY ROLL

Board Exhibit 14

Q. Oh, not in case of discharge?

A. No, sir.

Q. I see. This states here for notice applies to what?

A. In case that a man wants his pay at a certain time, here he gives notice in advance that he is leaving on a certain date and his pay is generally prepared for him.

Q. But you don't give your employees any notice of a lay-off or any notice of a discharge?

A. We may occasionally give them notice of a lay-off if we know it in advance.

Q. Yes?

A. But insofar as a man being discharged, there is no notice given.

Q. It does not strike you as at all significant that this man was laid off after he started to work one morning and had in an hour and a half, and was suddenly told, "You are all through?"

A. I don't know. It may have come to the foreman's attention at that very moment.

362 Q. Oh, he just suddenly became belligerent?

A. I mean this memorandum.

Mr. PATTERSON. I see.

Mr. CARMODY. May I see that? Are you through with it?

Mr. PATTERSON. Yes; I am.

(Document handed to Mr. Carmody.)

Q. (By Mr. CARMODY.) Can you explain to this Board, Mr. Vosler, why it was that these men, whom you say were laid off because you were reducing forces, were laid off in the middle of the morning or the middle of the afternoon?

A. No; I can't do that. The foreman apparently had orders to reduce certain men, and he took care of it.

Q. Well, now, as an ordinary practice in your company, when you lay off a man because of a reduction of forces and he starts to work in the morning you find enough work for him to do to finish that day, don't you?

A. Not always.

Q. Isn't that usual?

A. I don't know whether it is or not. We don't always do it.

Q. Can you tell me why you now claim you laid these fellows off because you were reducing forces and you immediately discharged them?

Mr. KLEIN. Which men are you talking about, Mr. Patterson?

Mr. PATTERSON. All seven of them.

363 Mr. KLEIN. We don't say that, I do not believe. I think we said that during this period there was a lay-off, and the fact that they were laid off—these two fell

in line with the general lay-off because they had been doing these things. They had been doing these things in line with the general lay-off, and they were laid off with the others.

Mr. PATTERSON. Well, they were not laid off. They were discharged. I want to know what was the excuse.

Mr. KLEIN. There is no excuse. That is a fact.

Q. (By Mr. CARMODY.) What is meant by a "lay-off"?

A. Reduction of force is a lay-off.

Q. And for any particular term?

A. Term?

Q. Yes.

A. Not necessarily. We usually don't know.

Mr. KLEIN. We use the word "lay-off" or "dismissed" in the answer, I think, to cover both situations.

Chairman MADDEN. You mean you have said both about each man?

Mr. KLEIN. No. I say, during this period in which these two were laid off or dismissed.

Chairman MADDEN. Some were laid off.

Mr. KLEIN. And some were dismissed.

Q. (By Mr. CARMODY.) Do you have group insurance covering your men?

364 A. Yes, sir.

Q. You do?

A. Yes.

Q. Were these men insured?

A. I don't know.

Q. Would you be able to find out whether or not these men had policies?

A. Yes, sir.

Q. With what company do you do that group insurance business?

A. The Connecticut General.

Q. That is a general policy under which each employee gets a certain protection, is it?

A. Yes, sir.

Q. (By Chairman MADDEN.) And he gets a certificate?

A. And he gets a certificate indicating it.

Q. (By Mr. CARMODY.) Now, who pays the premium on that group insurance?

A. The cost is divided between the company and the men.

Q. Then pay part of the premium?

A. Yes, sir.

Q. Are there any dividends on those policies?

A. No, sir.

Q. Nothing accrues at all; nothing comes back ever?

A. No, sir.

Q. There is no fund coming back from dividends
365 on those policies?

A. No, sir; not that I know of.

Q. How does the man take out his policy?

A. I don't know.

Q. Who would know that?

A. I am at a loss to answer just who would know that, right now.

Q. In your company who arranges for this group insurance business?

A. Our treasurer, in a general way, arranged for it.

Q. And who handles the collection of the premium from the men?

A. That is taken from his pay check.

Q. That is a deduction?

A. Yes.

Q. Commonly known in the coal industry as the "check-off"?

A. I do not recall.

Q. Well, that is what they call it in the coal industry where I spent several years. When money is deducted from men's pay in the office it is called a check-off. The deduction is made in the pay-roll office. Where is that deduction made in your plant?

A. In the treasurer's office.

Q. And does the man get a statement showing the amount of the deduction?

A. It is a fixed amount which he is advised of at
366 the time of employment, Mr. Carmody.

Q. I see. But he does not get any statement of that deduction?

A. No; I don't think so.

Q. Are there any other deductions made from his pay?

A. If he carries health and accident insurance, which is available to him, there is a deduction for that.

Q. Is that a group arrangement, too?

A. Yes, sir.

Q. With the same company?

A. I think so. I am not sure.

Q. Those are the only deductions?

A. Yes, sir.

Q. Made normally from his pay. Now, as to these men, did each of these men sign an application for this insurance?

A. I don't know.

Q. Did any of them?

A. I don't know.

Q. Your treasurer would know?

A. Why, it would be available there somewhere.

Mr. CARMODY. Might we have the treasurer here with these group-insurance records on these men?

Mr. KLEIN. As to the application or the discontinuance, sir?

Mr. CARMODY. Both. How they were discontin-
367 tinued—the whole record.

Mr. KLEIN. I will be glad to make them available.

Mr. CARMODY. The deductions that were made and what arrangements were made to discontinue the insurance.

Mr. KLEIN. I think that is generally handled this way: When a man is employed a slip is made out and sent to the insurance company.

Mr. CARMODY. We would be glad to have a little more detail and to have the man here who knows about that.

Q. (By Mr. CARMODY.) You had nothing to do with arranging for this group insurance?

A. I remember being there.

Q. Where did the suggestion originate in the company that they buy the policy there?

A. I don't know.

Q. Not with you, would you say?

A. I have no idea, where it came from.

Mr. CARMODY. All right.

Q. (By Mr. EDWIN S. SMITH.) Mr. Voeler, you distinguish between lay-offs and discharges, do you not?

A. Yes, sir.

Q. How is the slip that the man gets at the termination of his employment—if he is laid off how is that marked?

A. Usually "Reducing force." During the period of reducing the force there may have been certain men
368 that are discharged, however.

Q. Well, that is the case, it is your contention, of these two men?

A. What two men?

Mr. KLEIN. Yes, there are two men.

Mr. EDWIN S. SMITH. Mr. Weinmann and——

Mr. CARMODY. Well, Mr. Peterson was a discharged man, was he not?

Chairman MADDEN. Who was the other laid off man?

Mr. PATTERSON. Mr. Milne.

Mr. KLEIN. Milne and Beck, I think, were laid off.

Chairman MADDEN. Beck is the man who had the accidents?

Mr. KLEIN. Yes, he had four or five accidents in a short period of time.

Mr. EDWIN S. SMITH. What does the witness say? Was that a lay-off or discharge?

The Witness. It was a lay-off. The only thing we had against him was his accident record.

Q. (By Mr. Edwin S. Smith.) That is what I am trying to get at; when you discharge a man he is discharged for cause?

A. Yes, sir.

Q. How would you describe that ordinarily, a discharge for cause? What would you put on his termination slip?

A. This one here says "Work unsatisfactory."

Q. That is Peterson?

369 Q. And this other one was not discharged, Mr. Beck. That was a lay-off?

A. That is my recollection.

Q. But his accident record was unsatisfactory?

A. He did have a bad accident record.

Q. What do you mean when you say "unsatisfactory" with respect to Peterson? Did "unsatisfactory" refer to his work or what?

A. Yes, sir; to his work.

Q. Just to his work?

A. Yes, sir.

Q. But you did not put that down as against Beck, or whoever discharged him did not put it down?

A. I do not recall.

Q. Well, you have tried to draw a distinction between Beck, who was laid off, and Peterson, who was discharged?

A. Unfortunately the foreman is not always as careful as he should be about filling out these tickets.

Q. (By Chairman Madden). What would you expect to see on Beck's ticket, "unsatisfactory"?

A. I don't know.

Q. Take a—taking foremen as they are and as careless as they are about saying the wrong thing, Beck's ticket probably would say "unsatisfactory"?

A. I don't know.

Q. He therefore would have no way of knowing

370 whether he was discharged or laid off?

A. I don't know. I don't know what conversation may have taken place or what his slip said.

Q. Well, these men who are laid off as distinguished from discharged, do you summon them again when there is a job available or do you expect them to keep on coming around and asking?

A. As a general thing they keep in touch with us. It may be a matter of several weeks or months, and we don't always follow them up.

Q. Well, do you ever follow them up?

A. Very seldom, Mr. Madden.

Q. How would you put—how would you distinguish between those that you would follow up and those that you would leave and forget unless they kept you reminded?

A. I don't think that there would be any line drawn there. If a man were following us up and came in today and announced to us that he was still out of work, and looking for something, if something developed tomorrow or the next day, we might get in touch with him even though he had been laid off three months earlier.

Q. So that you would not put them back on in the order of seniority or in the order in which—the men who had been off the longest or shortest, but it would depend on which one kept you reminded that he was a sort of a human being and had been out of work for some time?

371 A. That would be the way.

Q. (By Mr. CARMODY.) Have you read the report on the unemployment situation made here by the N. R. A.?

A. No, sir; I have not.

Q. I suggest that you read it. It is an enlightening document as to what goes on in the employment business around town. Isn't it true that the measure to which you follow these men up depends on the supply of labor on the market?

A. (No response.)

Q. Were you operating here during the war?

A. Yes, sir.

Q. Not many men were laid off then, were there?

A. I do not remember.

Q. If they were laid off, they were asked to come back, weren't they?

A. I do not remember.

Q. Don't you remember there was a great complaint about certain employers robbing other employers of their employees here during the war shortage of skilled labor in the industry?

A. Well, there was that, as I recall.

Q. Well, isn't it true, in general, that the question of whether or not you follow these men up that you lay off depends on whether or not you can get a quick supply of labor to fill orders coming in, with additional personnel?

A. No; that has not been the general policy.

372 Mr. CARMODY. Of course, it has not. There has been a surplus of labor here for the past five years.

The WITNESS. I think so.

Mr. CARMODY. And now a shortage of labor is coming on, of skilled labor.

Q. (By Mr. Chairman MADDEN.) Was Milne discharged or laid off?

A. I think he was laid off. He was laid off.

Mr. PATTERSON. The answer admits they were all discharged.

Mr. KLEIN. Well, I did not differentiate between the terms, but they were not employed. By "discharged" is meant that their employment was stopped.

Q. (By Mr. EDWIN S. SMITH.) Well, isn't it true, Mr. Vosler, when you lay off men on account of reduction of force you do not accompany it by any statement that they may get employment again in some certain time and that their lay-off is for a particular period?

A. We never can tell.

Q. Well, as far as any of these men who were let go by the company are concerned, they would have no means of knowing whether they were discharged or laid off normally?

A. I think they would be told that.

Q. They were told either "You are being laid off because of a reduction in force", or "you are discharged be-

373 cause your work is unsatisfactory"?

A. I think that usually happens.

Q. And when they were told the latter, that they were discharged because their work was unsatisfactory, was that a sort of notice to them that they could not expect reemployment with the company?

A. Normally I should say that.

Q. (By Chairman MADDEN). Why do you suppose this chap Beck, who was prone to accidents to the point where you did something to him, either discharged him or laid him off—why would you take him back? You call his case a lay-off. Was his removal from service meant as a lesson to him or warning, or what?

A. It was a case——

Mr. KLEIN. I did not understand that Mr. Vosler said in his case that he would take him back, but he said that in laying him off, that would be one consideration for laying him off.

Chairman MADDEN. Just a moment. In answer to Mr. Carmody's question, as I understand, he said that Mr. Beck was not discharged, but was laid off.

Mr. KLEIN. That is as I understand it. But that was one consideration for the lay-off.

Chairman MADDEN. Is there any distinction in our minds between discharged men or laid off men, or are they in the same boat?

Mr. KLEIN. I think technically when a man is dis-

374 charged or when he is laid off solely because of reduction of force and for no other reason, that man

would be employed at a later time. In certain cases where he was discharged for certain causes, he probably would not be re-employed, or where he was laid off and it was a question of re-employing another man, who was more efficient, that would depend upon the circumstances, the re-employment.

Chairman MADDEN. Will you tell me whatever the difference may be between laid off and discharged, whether Mr. Beck was laid off or discharged?

Mr. KLEIN. I understood from Mr. Vosler in my conversation with him that he was laid off, and one of the reasons why he was laid off rather than some other man who was not laid off was that his accident record was one of the factors.

Chairman MADDEN. But it was not so bad that it would necessarily keep him from being re-employed.

Mr. KLEIN. If there was a shortage and they could not get other men who were equally as good as Mr. Beck.

Chairman MADDEN. Let us look at his accident record a moment. When was he laid off?

Mr. PATTERSON. The 6th of July.

Chairman MADDEN. Well, now, his accident record over a period of years is so bad that he had an accident in June 1934. It does not say whether he hurt himself or somebody else. And in December 1934 and December 1934
375 again—twice in the month of December 1934; and twice in the month of February 1935, and it took until the 6th of July to lay him off because of his bad accident record.

Mr. KLEIN. No. At that time there was production up to June 25th.

Mr. CARMODY. In other words, however prone he was to accidents, he was a necessary cog in this plant while they were busy. You can tolerate a man who has accidents twice a month when you are busy.

Mr. KLEIN. When it comes to laying off men you must retain the men who are best suited for the work.

Mr. CARMODY. Wouldn't you say that a man who has not had an accident from the 4th of February to the 6th of July might have washed up his previous bad record for unsafe operations?

Mr. KLEIN. He might have.

Mr. CARMODY. Now, in whose judgment was it assumed that his accident record was bad?

Mr. KLEIN. I think the foreman's.

Mr. CARMODY. Now, let us assume that a man with only a foreman's judgment applied to the man—that they change foremen during the month and a new foreman comes in who

has no previous knowledge of the skill and efficiency of these men. Then, how shall he judge their efficiency?

Mr. KLEIN. From the fact that the superintendent might have gotten an idea of it from the previous foreman

376 and imparted it to him from the previous foreman. If he did not, he would just have to start anew.

Mr. CARMODY. Then the question of whether or not these men then continue working is left to the judgment of foremen?

Mr. KLEIN. I think to a large extent. These foremen have been there a long time, a great many years; one for 19 or 20 years, and another one for 10 years.

Mr. CARMODY. How long has Mr. Halpin been there?

Mr. KLEIN. I think about a year and a half?

The WITNESS. Yes.

Q. (By Mr. CARMODY.) But none of these other foremen were promoted to that job when he came to take that job?

A. How?

Q. None of them were considered competent enough to take that job in spite of all their experience?

A. No, sir.

Mr. CARMODY. That is all.

Chairman MADDEN. Recess until two o'clock.

(Whereupon, at 1 o'clock p. m., a recess was taken until 2 o'clock p. m. of the same day.)

(After recess.)

(The hearing was resumed at 2 o'clock p. m. pursuant to recess.)

Chairman MADDEN. The hearing will come to order. Have you something further with Mr. Vosler?

377 Mr. KLEIN. Do you want Mr. Vosler back?

Mr. PATTERSON. Yes, I have just a few further questions.

EARL L. VOSLER, the witness on the stand at the time of recess, resumed the stand and testified further as follows:

Cross examination (continued):

Q. (By Mr. PATTERSON.) Mr. Vosler, on the 9th page of the answer, which you verified in this case, you state:

Further answering paragraphs 8 to 29, inclusive, the respondent, Fruehauf Trailer Company, shows that from the period of June 20th, 1935, to July 21st, 1935, because of a then decided falling off of its business and the consequent reducing of its manufacturing operations, 72 production and manufacturing employees were laid off, or dismissed, including the six employees named specifically in the complaint.

In the preceding paragraphs you have admitted that all six of the employees named in the first case were discharged. In this paragraph on page 9 you differentiate between the dismissal of an employee, and the laying-off of an employee.

Do you regard these six employees named in the first complaint, as having been discharged?

Mr. KLEIN. I think I explained that this morning, if the Board please——

Chairman MADDEN. Let the witness explain it.

Mr. KLEIN (continuing). How that language crept into the answer. I drew the answer.

378 Chairman MADDEN. Let the witness explain.

A. It applied to part of them. Part of them were discharged, and there were one or two, as I recall it, who were laid off.

Q. (By Mr. PATTERSON.) You say "were laid off or dismissed, including the six employees specifically named in the complaint."

Now, you have said in this answer that you admit that all six of them were discharged. Now, did you mean "discharged" or did you mean "laid off"?

A. Perhaps it is just a difference in the way of using the word "discharged." As Mr. Klein suggested this morning, when a man's term of employment—when an employee's term of employment is terminated, it might be sometimes that he is discharged——

Q. Well——

A. Regardless of whether—pardon me?

Q. You intended discharging every one of those six fellows, did you not?

A. No, sir. As I recall it, two of those men have nothing really bad against them—against their records.

Q. Of course what you are testifying to concerning the fact of their discharge or lay-off, is what you learned from Halpin or Rosenbusch, or Goodell, is it not?

A. That is right.

Q. Yes. So that your testimony on that is not
379 direct, but indirect; that is correct, is it not?

A. I do not know——

Q. Well——

A. How you classify it.

Mr. KLEIN. He did not fire the men himself.

Q. (By Mr. PATTERSON.) Your information is not first-hand information I mean, is it?

Mr. KLEIN. He did not fire the men himself, Mr. Patterson.

Mr. PATTERSON. No.

Mr. KLEIN. If that is what you mean.

Mr. PATTERSON. Yes.

Q. Now, who is immediately under Mr. Halpin, so far as personnel is concerned? Do you have a shop foreman?

A. In each department.

Q. You have a shop foreman in each department?
A. Yes, sir.
Q. How many foremen are there in the entire plant?
A. I do not know.
Q. Well, is there one foreman who is immediately under Mr. Halpin in authority and yet superior to the other foremen?
A. I do not believe so.
Q. You do not believe so?
A. No, sir.
Mr. PATTERSON. I think that is all with this witness at this time, if the board please.

380 Redirect examination:

Q. (By Mr. KLEIN.) Mr. Vosler, do you have, to your knowledge, any union men working for you now?
A. I expect that there are; yes, surely.
Q. Or men who formerly belonged to the union?
A. There are those there who formerly belonged to the union; yes.
Q. And at this period that we refer to, from June to July—I believe it is—when the 72 men were laid off, or dismissed, out of that group, was there a great number of men who were not union men, who were also dismissed during that period?
Mr. PATTERSON. That is objected to. The record is the best evidence of that.
Mr. KLEIN. No; I think——
Mr. PATTERSON. We are not going to take this man's story. He says he does not know, that he turned it over to Halpin.
Mr. KLEIN. He said he had some information, and I want it from him.
Q. From whatever information you had, or you got, Mr. Vosler, did you have any men who were not union men, who were dismissed during that period?
A. Yes, sir.
Q. In dismissing non-union men, did you use the same standard for laying them off or dismissing them, as against those who were retained at the factory?

381 A. It is purely——
Mr. PATTERSON. Unless he knows. I object to it unless he knows of his own knowledge.
Q. (By Mr. KLEIN.) Did you have, or do you have any factory policy on that, generally?
A. Our foremen are instructed to keep those men who are most efficient, and who are going to work into the best interests—that is, with the best interests of the company. That has always been the policy that is used in discharging.

Q. In other words——

Mr. CARMODY. Does that question imply that he knew who were union men and who were not union men, at the time of this lay-off?

Mr. KLEIN. Yes.

Mr. PATTERSON. Yes.

Mr. KLEIN. He knows some of the men; he said that this morning.

Q. Did the company have a policy as to what it considered a good employee, in determining questions of lay-off and dismissal?

A. Why, each foreman had that duty, in line with certain policies that were long established, and which they were familiar with.

Q. Efficiency is one of those requirements, is it not?

382 A. That is among them.

Q. That is one of the important requirements, is it not?

A. Yes.

Q. (By Mr. CARMODY.) How would efficiency be determined, in that case?

A. It would be determined by the foreman entirely.

Q. (By Mr. KLEIN.) And the men were directly responsible to the foreman?

A. Yes, sir.

Q. Would harmonious cooperation with a man's fellow workers, where the work was in a team of four or five, be a factor in whether or not a man was considered a good employee?

A. I expect that it would be. I think that any foreman would judge on that basis; yes, sir.

Q. And where an employee obviously showed that he did not have the interests of the company at heart, would you as a matter of company policy consider him a good employee, even though he might have been efficient otherwise?

A. No; I would not.

Mr. EDWIN S. SMITH. Would you develop from the witness, Mr. Klein, just what is meant by the phrase which you have been using here, "have the interests of the company at heart"?

Mr. KLEIN. Yes, surely.

Q. If a workman went to his fellow workmen and preached to them hatred against the employer, would

383 you consider that having the interests of the company at heart?

Mr. PATTERSON. That is objected to. That is altogether too broad and indefinite.

Mr. KLEIN. I was requested to develop that.

Mr. PATTERSON. It is too broad.

Mr. KLEIN. Oh, no.

Mr. PATTERSON. Oh, yes.

Chairman MADDEN. Since there is no evidence so far that there was any such workmen, why do you not leave out the objectionable part of your question and simply ask the witness to define for himself what would be the situation where a workman did not have the interests of the company at heart?

Mr. KLEIN. All right, Mr. Chairman. Very good.

Q. Will you answer the question of the chairman, please, Mr. Vosler.

A. Well, unfortunately there are occasions that arise where for some reason or other a man does get to the point where he is more or less down on the company, and he conveys that to his fellow men; and a workman of that sort has not got the best interests of the company at heart, and cannot have the best interests of the company at heart.

Chairman MADDEN. If I may ask right there——

Mr. KLEIN. Yes.

Q. (By Chairman MADDEN.) For what reason did any of your workmen have that feeling of being "down" on
384 the company, as you express it?

A. I cannot answer you that question, Mr. Chairman.

Q. They were well paid, were they not, as wages went in this district?

A. I think so.

Q. You would think, then, that they would not be "down" on the company by reason of low wages?

A. Well, some men are always dissatisfied with their wages, no matter what they are. You will always find men who complain about the wages.

Q. Do you know whether any of these men complained more than most of us do——

A. No.

Q. —about what we get?

A. I do not know that.

Q. Was there anything unusual about your working hours, that would cause them to complain?

A. Not that I know of.

Q. Were the conditions in your shop good, with reference to the facilities for the workmen?

A. I think on the average they are.

Q. (By Mr. CARMODY.) What are those hours?

A. The hours have varied, Mr. Carmody, from——

Q. From what to what?

A. I do not think we have worked less than 40 hours during the year.

385 Q. Per week?

A. Per week; yes, sir.

Q. Up until——

A. (Continuing.) And there have been periods when I think we have worked as many as 60 hours a week.

Q. Were the men complaining because they were not working enough hours or because they were working too many hours?

A. We had some complaints for not working——

Q. Enough hours?

A. Enough hours.

Q. That is when you were working 40 hours?

A. Yes.

Q. Yes. Then did you have any complaints that you were working too many hours?

A. Yes.

A. When you were working 60 hours?

A. Yes; we had complaints there.

Q. (By Mr. KLEIN.) You cannot satisfy everybody, can you, Mr. Vosler?

A. No, sir.

Q. (By Chairman MADDEN.) Did any of your men feel down on the company because of what they perhaps regarded as a policy of the company of interfering with their organization—with their organizing themselves as they wanted to?

386 A. I do not know.

Mr. KLEIN. Well, I think your question presupposes the very thing you are asking about, Mr. Chairman.

Chairman MADDEN. Well, yes; but then—yes; there is a certain amount of presupposition in it.

Mr. KLEIN. Yes; and no matter how he answers it, he is damned by your question.

Chairman MADDEN. No. I will put it on this basis: Did it come to his knowledge that any of the men, supposing that the company had this policy, were irritated by it, and felt down on the company for that reason?

Mr. KLEIN. If I might make the suggestion, sir, because I want to be fair about it, just as you do, I know: If you asked Mr. Vosler if some of the men supposed that the company opposed their unionizing, I think that would be a fairer question along the lines you suggest.

Chairman MADDEN. All right. What is the answer?

A. I do not know.

Q. (By Mr. CARMODY.) Do you mean that you do not know what the men were thinking about in that respect?

A. As far as our attitude toward them was concerned?

Q. Yes.

A. No.

Q. Do you mean to say that with this man Martin cir-

culating around among the men, freely, as a workman,
387 and surreptitiously interviewing the men, and bringing the information back to you about what they were talking about, that you did not know what they were thinking about, or what they were talking about?

A. Not as far as our attitude towards this so-called union was concerned.

Q. (By Chairman MADDEN.) Had there been no events in the past which would indicate to the men whether you were in favor of or against unionization?

A. I do not recall anything.

Q. (By Mr. KLEIN.) There was a complaint at one time, was there not, Mr. Vosler, in which Mr. Milne was involved, in 1934 or 1933?

A. Yes.

Q. And Mr. Milne is involved in this proceeding?

A. Yes.

Mr. CARMODY. What sort of complaint?

Mr. KLEIN. That there was discrimination, sir.

Mr. CARMODY. He complained that there was discrimination?

Mr. KLEIN. Yes.

Mr. CARMODY. At that time?

Mr. KLEIN. Yes; he complained, and the record in that case—well, I do not think that case was ever disposed of; and Mr. Milne was not then re-employed for a considerable time.

Q. Was Mr. Milne re-employed at a materially later date, Mr. Vosler, after that——

388 A. Just as soon as——

Q. After he complained against you?

A. Just as soon as we had an opening in that department.

Q. As soon as you had an opening?

A. Yes, sir.

Q. And did you tell Mr. Milne that you would not hire him back because he was a union man——

A. No.

Q. And had complained against you?

A. No, sir.

Q. You did hire him back, did you not?

A. Certainly.

Q. And you have got a lot of other union men working for you, have you not?

A. Certainly.

Q. And will they be able to continue to work for you, if you have work?

A. Just as long as they work conscientiously and attend to the interests of the company; yes, sir.

Chairman MADDEN. Pardon me a moment.

Mr. KLEIN. Yes, sir.

Q. (By Chairman MADDEN.) You said this morning that there was a change in your policy after the decision which invalidated the N. R. A. Did I understand you correctly?

A. Yes, sir.

389 Q. That is, that you bargained with the men as long as you thought that the law required it, but thereafter you did not.

A. Well, ——

Q. (Continuing.) Now, that was known to the men of course, was it not?

Mr. KLEIN. Well, I think, Mr. Chairman, that the records will show that they talked to their men afterward.

Chairman MADDEN. Well, I thought that the witness this morning drew a distinction between the pre-Schechter decision era, and the post-Schechter decision era.

Mr. KLEIN. Well, there was a change in the hours. I think that there were longer hours instituted after that.

Chairman MADDEN. Well, his statement was that they bargained with the men as long as the N. R. A. was in effect.

Mr. KLEIN. I think that is correct, sir.

Mr. PATTERSON. Yes.

Chairman MADDEN. And I inferred from that, that they did not bargain with them thereafter; or at least there was some noticeable change in their dealings with the men.

Mr. CARMODY. I did not understand him to say that they bargained with them. I understood him to say that they did not ride them for being members of the union until the *Schechter case* decision, and then they began this work of finding out who the union men were, and get rid of them—or something of that kind.

390 That was my understanding of his answer.

Mr. KLEIN. No.

Mr. CARMODY. Although I may have been wrong.

Mr. KLEIN. There was a change——

Mr. CARMODY. I did not understand that it was a bargaining proposition.

Mr. KLEIN. I think there was a change in hours. They worked longer hours. I think they had complaints—the witness will testify that the men complained that they were only working 40 hours, and that they wanted to work longer.

Mr. CARMODY. Yes.

Mr. KLEIN. And the character of the work was such that it was better to have a man work longer, because of the character of the work, rather than put a new man on for a temporary shift, when they had more production.

Chairman MADDEN. Mr. Vogler, we have all talked about what we think you said this morning. Supposing you tell us now, yourself——

Mr. KLEIN. Certainly, sir.

Chairman MADDEN. Just what it was that you said this morning.

The WITNESS. I think I said that we had met with the union, and the officers of the American Federation of Labor, previous to the time that the N. R. A. was invalidated.

Chairman MADDEN. And was I correct in inferring
391 that you meant that after the time when the N. R. A. was invalidated, you did not meet with them?

A. Yes, sir; we did not meet with them.

Chairman MADDEN. Proceed.

Q. (By Mr. KLEIN.) Did you meet with the men or did your superintendents meet with any of the men?

A. They always met with any of the men, either before or after.

Mr. PATTERSON. I will say he met with seven of them.

Chairman MADDEN. My point is this, that there was apparently a change at that time, at that point, and that might have given to the men, or to some of the men, a reason, or at least an excuse for being down on the company.

But if that was true, you say you do not know about it?

The WITNESS. Right.

Q. (By Mr. KLEIN.) Mr. Vosler, does your company—pardon me, Mr. Chairman. Had you finished?

Chairman MADDEN. Yes.

Mr. KLEIN. I am sorry. I did not mean to interrupt.

Chairman MADDEN. Proceed.

Q. (By Mr. KLEIN.) Mr. Vosler, does your company give the men steady employment throughout the whole year as compared with a number of other industries that are more seasonal?

A. I think that, compared with the average industry in the city of Detroit, our men do have more steady work
392 than most of the men in the plants—the other plants.

Q. Throughout the entire year that is?

A. Yes, sir. Over a period of time, I think that is true.

Q. I suppose that there have been periods when your production has slowed down?

A. Yes, sir.

Q. And I suppose there have been periods when you got more business?

A. Yes.

Q. And your production stepped up?

A. Yes, sir.

Mr. EDWIN S. SMITH. Would the witness elaborate a little bit on that? Perhaps you were going to ask him about it. I would be interested in knowing what the fluctuations are.

Mr. KLEIN. Yes, surely.

Mr. EDWIN S. SMITH. From month to month.

Q. Do you know that, Mr. Vosler—that is, the difference at the peak of whatever your seasonal upswing is, and then the valley?

A. Well, ordinarily along the early part of the year, in January and February we are at a fairly low ebb. Then we add some men through March and April, and along in the summer we have another slump ordinarily—that is a fall-off.

Q. Beginning when? In July, or when?

A. Well——

393 Q. Or June?

A. Well, that is when we feel it the worst, in July and August. They are usually the lowest months of the year. There is that slump during the summer.

Q. Well, what percentage of reduction would there be normally between January and August?

A. Oh, I do not think that it would vary more, on an average, than from 20 to 25 percent.

Q. 20 to 25 percent?

A. Yes, sir.

Q. Do you think it might be as much as that—that there might be as much as a 20 or 25 percent difference between August and January?

A. Yes, sir; it would be. There would be some difference there, but it is not nearly as much of a difference as many of the other industries here have.

Q. (By Mr. KLEIN.) That is your normal experience?

A. Yes, sir.

Mr. KLEIN. That is what I gathered to be the purport of Mr. Smith's questions.

Mr. EDWIN S. SMITH. Well, I mean, aside from the general trend of the business.

Mr. KLEIN. Yes.

Mr. EDWIN S. SMITH. What the seasonal difference is.

Mr. KLEIN. Yes.

394 Q. (By Chairman MADDEN.) And do you take up that seasonal slack by separating men entirely from the pay roll, rather than by spreading the work among the whole group?

A. We take up part of it by an increase in hours among the men who are at work, and then we add some new men.

Q. (By Mr. CARMODY.) That is, on the upswing.

A. Oh, pardon me.

Q. That is the upswing period.

A. I misunderstood.

Mr. CARMODY. I think that the chairman's question was on the down-swing.

Mr. KLEIN. The down-swing.

Chairman MADDEN. Yes.

The WITNESS. Yes; that is ordinarily true.

Q. (By Mr. KLEIN.) Well, you had better elaborate on that, I think, Mr. Vosler. It is a little ambiguous, the way it is now.

A. Well——

Q. When you lay off more men, do you shorten the hours of the men so as to give more work to more men at the less hours, or do you lay off more men and keep them at their normal 40 hours, or 45 hours, whatever it is?

A. We get back then to a lower weekly schedule of hours, and at the same time we have to lay off men, usually.

Q. Well, say that you were—if you were on 45
395 hours per week, you would lower that to 40 hours, is that it?

A. We have not been below that——

Q. Pardon me.

A. 40 hours, I think, for the last two years, at least.

Mr. KLEIN. I do not believe the witness is answering the question.

Chairman MADDEN. Apparently he does both.

Mr. KLEIN. Yes.

Chairman MADDEN. He both reduces the hours and lays men off.

The WITNESS. Yes.

Q. (By Mr. KLEIN.) It depends on the nature of the work, and the department?

A. Yes.

Q. And how you can best handle it.

A. Yes.

Q. And the number of men that there are.

A. Yes.

Q. Was there a time during this slack period this year when you produced a number of trailers that you did not have orders for in advance, when you did not know whether you could sell them or not, just to keep the factory going?

A. During the summer months we produced trailers for stock.

Q. Just for stock?

A. Yes, sir; which we shipped to our branches,
396 some of them, and carried some of them here in Detroit.

Q. (By Mr. CARMODY.) What would be the total number of those trailers so produced?

A. I do not know.

Mr. CARMODY. Is there any way of finding out?

Mr. KLEIN. Would it be 175 or 150, Mr. Vosler, or how many would you say?

The WITNESS. Well, I know that there were more than 150, but just how many there were, now, I do not know.

Q. (By Mr. CARMODY.) What is the daily production of the plant, in units?

A. Well, ——

Q. On the average.

A. 25.

Q. 25?

A. Yes.

Q. So that 175 units would represent how many days' work? About seven days, would it not?

A. Well, we produce—we do not produce that number of bodies with them. We can produce that number of chassis.

Q. I was thinking about the total units.

A. Well, I would differentiate between the chassis units and the completed body units.

Q. They are made separately?

A. Yes.

397 Q. In separate parts of the plant?

A. Yes.

Q. Let us talk about them separately. How many chassis would you produce?

A. About 25.

Q. 25 per day?

A. Yes.

Q. And how many bodies per day?

A. Oh, about 10.

Q. About 10?

A. Yes.

Q. Then you produce 175 bodies; is that it?

A. Yes, sir—those were complete body jobs.

Q. Complete body jobs?

A. Yes, sir.

Q. So that would be how much; about 17½ days work on the bodies, and about 7 days on the chassis for the factory, on the items that you produced for stock, in advance of orders?

A. At that time?

Q. Yes?

A. Yes, sir.

Q. Seven days for the main part of your factory?

A. Yes.

Q. And seventeen and a half days for the body part?

A. Yes.

398 Mr. CARMODY. All right. Go ahead.

Q. (By Mr. EDWIN S. SMITH.) To follow that point up a little further, Mr. Vosler, when you are producing at your peak are you pretty well up to the productive capacity of the factory, or are you not?

A. Yes, sir; we are, at that basis.

Q. So that, aside from what motive you may have in the way of giving men employment by manufacturing for stock in the summer season, you may also have the real business motive for doing so, on the basis of a more efficient use of capital investment; that is correct, is it not? I mean, it would mean that you would not have to build as large a plant, to take care of your January peak, if you were in a position to build up certain stock parts during your off-season——

Mr. CARMODY. January is the trough, Mr. Smith.

Mr. EDWIN S. SMITH. Oh, I thought January was the—well, then, the other way around.

Mr. CARMODY. It is the trough.

Mr. EDWIN S. SMITH. Yes. The other way around, then.

A. That would probably work out that way; yes, sir.

Mr. KLEIN. And it would retain more of the organization also, Mr. Smith.

Mr. EDWIN S. SMITH. Yes. I just simply wanted to bring out the point that there was both a humanitarian motive and a business motive.

399 Mr. KLEIN. Both motives, sir; that is correct; there were both, I imagine, although I do not know.

Mr. CARMODY. There was some risk attached, of course.

Mr. KLEIN. How is that?

The WITNESS. It meant that the company——

Mr. CARMODY. There was some risk attached, I say.

Mr. KLEIN. Oh, yes; there is no question about that.

Q. And you were not producing at your peak, on those 25 a day, or whatever that was, per day?

A. No, not at that time.

Q. When you had a lower force?

A. No.

Q. So it spread the work more?

A. Yes.

Q. Because you did produce those trailer bodies?

A. Yes, sir.

Mr. CARMODY. Of course, what we ought to have here is a man-hour chart showing the total number of man-hours each of the months during the year. That would come nearer to giving us your productive capacity—or, not your productive capacity, but your production, than anything else that has been presented here. You cannot tell what the situation is by taking the relationship between the number of men on the pay roll, one month as against another, be-

400 cause you may have a large number part of the month and only a few the rest of the month, particularly in a factory where men are dismissed in the middle of the day. But if you had the total man-hours productive em-

ployees, month by month, from January until the next January, then you would have that relationship, would you not?

The WITNESS. Yes.

Mr. CARMODY. Is that not true?

The WITNESS. Yes.

Q. (By Mr. KLEIN.) Do we have that at all, though, Mr. Vosler?

Mr. CARMODY. It is easy to get and submit, is it not, from your records?

The WITNESS. We do not compile it——

Mr. CARMODY. You could compile it very easily, and that would be an interesting showing here.

Mr. KLEIN. We will see what we can do.

Mr. CARMODY. And then we could follow the units of production, as you went along.

Mr. KLEIN. We will see what we can do about getting that.

Q. Do you know, Mr. Vosler, from statistical information which comes to you, whether or not your company pays as high a wage for its production as any trailer company engaged exclusively in the manufacture of trailers?

Mr. PATTERSON. That is objected to.

Mr. KLEIN. If he knows.

Mr. PATTERSON. Let us have the statistics.

Mr. KLEIN. I am asking if he knows.

401 A. I cannot say definitely that we do, today. However, I know that during the code hearings in Washington, it was developed that way, that we were at that time.

Q. (By Mr. KLEIN). Did you give Mr. Halpin any instructions or your employment manager any instructions, to inquire when a man applies for employment, whether or not he is a union member?

Mr. PATTERSON. That is objected to. He had the authority, and he said he turned over the personnel, the handling of the personnel, to Mr. Halpin.

Chairman MADDEN. That objection is overruled. The witness may answer the question.

A. There were no instructions given to the employment department, or to Mr. Halpin, in employing a man, to inquire as to whether he is a union man or a nonunion man. I do not think that question is ever asked of them; as far as I know at least it is never asked.

Q. (By Mr. KLEIN). There is nothing on your employment data card covering that, is there?

A. The blank has no such question as that to be answered.

Q. Did you ever give Halpin any instructions as to directing the foremen to employ or discharge men because they worked in a union—or belonged to a union?

A. No, sir.

Q. Did you give any instructions about the solicitation of union members during working hours at the plant?

402

A. Yes, sir; we did do that.

Q. What occasioned that, sir?

A. Because of complaints that we had, and the knowledge that we had that there was a certain amount of agitation going on in the plant, to the detriment of the work; and our foremen——

Q. For example, if five men were working in a crew, and one man was trying to solicit another man to join the union?

A. Yes. It was just that feeling—just having that brought up against the company, or some other thing outside of the company, and the divergence of their attention—or rather the diversion of their attention from what they are doing.

Q. (By Mr. CARMODY.) Did the complaints that you refer to come from the men who were being solicited?

A. It came from the foremen.

Q. The foremen?

A. Yes.

Q. (By Mr. KLEIN.) And if a man did not choose to join the union, and another man wanted him to join the union and discussed it with him during working hours, would that lead to an argument, or not?

Mr. PATTERSON. That is objected to as speculative.

Mr. KLEIN. Well——

Mr. PATTERSON. It might or it might not. He does not know.

403

Q. (By Mr. KLEIN.) What has been your experience, Mr. Vosler; what has been the report that you get?

Chairman MADDEN. Let him answer.

A. Well, I do not know definitely just what it would do.

Q. (By Mr. KLEIN.) Well, your foremen did make reports of agitation during working hours——

A. Oh, yes.

Q. By some union men, did they not?

A. Yes, sir; they did.

Q. From the information which you said—from the information which you had and the information which you got, a lot of the men in some of the crews were not union men, is that correct?

A. That is true.

Mr. CARMODY. Information he got where?

Mr. KLEIN. Well, he said he got some information this morning from those reports.

Mr. CARMODY. Did he get it that fine, down to that fine point, where some of the men in the crews were members of the union, and some were not members of the union?

Mr. KLEIN. He got some information, some names, he said.

Q. And did you tell your foremen, or did you tell Mr. Halpin, rather, to tell the foremen that the matter of soliciting union memberships during working hours had to stop?

A. Yes, sir; I did.

404 Q. And according to your reports, the reports made to you, two or three of the men involved in this proceeding were discharged, because after being warned, they refused to stop soliciting memberships in the union during working hours——

A. Yes.

Q. Is that correct, sir?

A. Yes, sir.

Q. Are there any reports of any dissention being spread around your factory, that have come to you now, by your employees, of their being dissatisfied?

A. No, sir; I do not know of a single thing.

Q. You do not?

A. No, sir.

Q. Do you know whether Mr. Halpin leaves his door open to the employees, or the foremen, whoever they may be, to discuss any problems with them?

Answer. Yes, sir; I believe that he does. At least, those are the instructions, that he is to do that.

Q. If your employees are satisfied and earning a fair wage, are efficiency and production going to go up?

A. Yes, sir.

Q. And your morale in your organization is going to go up also, is it not?

A. Yes, sir.

Q. And have you built up your business on that

405 basis, on that policy?

A. Yes, sir.

Mr. PATTERSON. That is objected to.

Mr. KLEIN. Here we have built up a little wagon business——

Chairman MADDEN. He may answer.

The WITNESS. I do not understand your question, Mr. Klein.

Q. (By Mr. KLEIN.) Do you feel that if your workmen are satisfied, and are earning a fair wage, under existing conditions, that will make for a better spirit of efficiency and loyalty in the organization?

A. It certainly does.

Mr. CARMODY. I would like to ask a question.

Mr. KLEIN. Yes, sir.

Mr. CARMODY. What is the best evidence of efficiency that could be brought in here? I do not mean the judgment of the foremen, now, but what is the best factual evidence that the company has, of the efficiency of the various individuals in its plant here? What could be brought in here in the way of evidence, that we could see; we, who look at it objectively, without being in the business, and from which we could judge?

Either counsel or the witness may answer that question.

Mr. KLEIN. I do not know, I am sure.

The WITNESS. I do not know.

Q. (By Mr. CARMODY.) What do you have in your files out there that would indicate to you, or to the members of
406 this Board, what is the efficiency of the individuals who work out there?

A. We do not have any records that set up the individual efficiency of the men.

Q. (By Mr. KLEIN.) That is up to the foremen, is it?

A. Yes, sir.

Mr. KLEIN. I think that was developed this morning, or earlier this afternoon, sir.

Q. (By Mr. CARMODY.) What is the best evidence of the efficiency of the business; that is what is the best factual evidence of the efficiency of the business?

A. Well, I hardly know how to answer that question, Mr. Carmody. Of course, at the end of the year we know whether we have made a profit or not.

Q. Did you make a profit last month?

A. I do not know.

Q. When would you know that?

A. Why, it would take some time to ascertain that. We do not attempt to take that off month by month.

Q. When do you take off your profit and loss sheet?

A. At the end of the year.

Q. At the end of the year?

A. Yes, sir.

Q. For the period of the year?

A. Yes, sir.

407 Q. And you do not get up any sort of a profit-and-loss statement during the interim?

A. Oh, there is some sort of a hit-and-miss proposition, but nothing that is really factual.

Q. When does your fiscal year end?

A. With the end of the year.

Q. The end of the year?

A. The calendar year.

Q. And you will not know, and you will not have any indication at all, until the 31st of December, whether or not this has been a profitable year?

A. Not with any degree of definiteness, Mr. Carmody.

Q. How far off is this hit-and-miss estimate, as you call it, from the actual facts usually?

A. I do not know.

Q. Is it close enough so that you more or less rely on it, and base your next month's activities on what happened the preceding month?

A. We do not use it as a basis.

Q. For anything?

A. For the next month's activities.

Q. You would not know then, whether for instance the month of June was a fairly profitable month or not?

A. Only from just the estimate of certain averages. We know that we did a certain volume of business.

408 Q. How did June this year, for instance, compare with June of last year? Do you remember?

A. No, sir.

Q. From the estimate that you made?

A. I really do not remember.

Q. Of course an estimate of that kind would not be of very much use to you, unless you used it in some way or other as a guide. Otherwise, you would discontinue it. It costs money to get it up, does it not, and it takes time in the accounting department to make up such an estimate of profit and loss, does it not?

A. I expect it must.

Q. So you would not know whether June of this year was profitable—or how it compared with June of last year?

A. No, sir; I would not know.

Mr. KLEIN. As far as volume is concerned, do you mean, now, Mr. Carmody?

Mr. CARMODY. No; as far as estimated profit and loss is concerned. The volume is simply what is shipped.

Mr. KLEIN. Yes; although costs may increase also.

Mr. CARMODY. That is why you make your estimate, really.

Mr. KLEIN. I imagine so.

Mr. CARMODY. And they are a little more than estimates, when used by the same people year after year. That is if the same people are making them over a period of

409 years, they can become very competent in their estimating. However, that could be determined, though. I mean, you have such a statement as you suggest, for June?

A. Yes.

Q. (By Mr. CARMODY.) In 1935?

A. Yes.

Q. And 1934?

A. Yes, sir.

Mr. CARMODY. I think I should like to see those. I should like to see how they compare, if they are available—that is, when the time comes, or later on.

Q. (By Chairman MADDEN.) Mr. Vosler, when you instructed your foreman to warn the men against the solicitation of union memberships during working hours, did you take any trouble to make it clear to them not to give the men the impression that the company was against the union as such, but was merely attempting to protect itself against loss of time and efficiency by this misuse of working time?

A. We tried to make it clear to the foremen that we were not interested in what the men did outside of hours; that our only interest, insofar as the union activities were concerned, was as to what they did regarding them during working hours.

Q. Well, did you tell your foremen to make that clear to the men?

A. Yes, sir.

410 Q. (By Mr. KLEIN.) Did you tell them, Mr. Vosler, or did Mr. Halpin tell them?

A. Mr. Halpin had the direct contact with them.

Q. (By Chairman MADDEN.) Well, then, do you know whether he told them or not?

A. He told me that he had.

Q. Do you believe that they believed him?

A. I cannot answer that question.

Q. I mean, would their past experience have indicated that that was really the position of the company?

A. I do not know, Mr. Chairman.

Q. You say that you had had a good many union men in your employment, and that you now have a good many who were formerly union men?

A. Yes.

Q. Do you mean that there has been a considerable dropping off in membership in the union?

A. I do not know.

Mr. KLEIN. I asked the original question in that connection, Mr. Chairman, and I may have made it a double-barreled one. I asked him whether—I did not know whether the men presently there were union men or not, and therefore I asked him whether he knew whether any men who were employed there now were union men, or were formerly union men, because I did not know whether these same men belong to the union or not.

411 That was my question, to make sure whether the

same men belong to the union or not; that was my question, to make sure that the men he is talking about here were union men, or are now.

Chairman MADDEN. I see.

Mr. KLEIN. I just wanted to make it clear.

Q. (By Chairman MADDEN.) Well, you have had those reports up until very recently, have you not, Mr. Vogler?

A. Yes, sir.

Q. What do you say, on the basis of those reports, with reference to an increase or a falling off in union membership?

A. I have not heard of a meeting being held recently, so I do not know.

Q. (By Mr. EDWIN S. SMITH.) Was that why you discontinued the reports?

A. No.

Q. Why did you discontinue the services of the agency, then?

A. We have not—well, of course, they are discontinued now, but——

Q. Well, when were they discontinued?

A. I do not know the exact date.

Q. Well, approximately?

A. Within the last month.

Q. And why did you discontinue them; why were they discontinued?

A. Well, we just did not have any immediate need for them.

412 Q. Well, did you not—why did you not have any immediate need for them? What had happened? Was the nature of the reports such that there was no indication that there was any necessity for further reporting; was that it?

A. No, sir; we will probably continue them again, as soon as we get around to it.

Q. Well, there must be some reason why you cut them off at any particular period, I should think?

A. Well, they were automatically cut off when this man was let out.

Q. (By Chairman MADDEN.) Well, he was not let out without some arrangement having been made with the Pinkerton Agency, was he?

A. Well, they knew that we were not satisfied with him, and that we intended to let him go.

Q. What was the matter with him?

A. Well, he was inclined to wander around a good deal, and did not always stick to his job, and we finally——

Q. Well, was it not his job to wander around——

A. No; I would not say so.
Q. And see what he could see?
A. No.
Q. Where do you mean, that he did his wandering; inside of the factory?
A. No.
413 Q. Or after dark, or when?
A. No; he stayed inside the plant.
Q. I wish you would really tell us about that, Mr. Vogler. Obviously that was not objectionable to you, because when you were paying the agency $175 a month for the services of this man, in the maintenance department, you were not paying for his work as an ordinary workman, and therefore you would have no reasonable dissatisfaction if he turned out not to be much as an ordinary workman.
Now, what was the matter with him, from the standpoint of the purpose for which he was hired?
A. Well, he was not producing a day's work in the plant.
Q. But was he supposed to produce a day's work in the plant?
A. Well, yes; he was. He was the type of worker that is doing a day's work.
Q. (By Mr. KLEIN.) He was expected to take part in the operations?
A. Yes, sir.
Q. The manufacturing operations?
A. Yes, sir; he was.
Q. (By Mr. CARMODY.) What was the $175 per month paid for, then?
A. I do not know just what became of that.
Q. What was it paid for?
A. Well——
414 Q. Was that paid for his work there?
Chairman MADDEN. That was in addition.
Mr. CARMODY. Yes; but it was paid for his work there——
Mr. PATTERSON. Yes.
Mr. CARMODY. Was it not?
A. Yes; I expect so.
Mr. PATTERSON. Yes.
Q. (By Mr. CARMODY.) And what did you expect to get for that?
A. Oh, I do not know; this information that he prepared for us, I suppose.
Q. Well, when could he get that if you expected him to do a day's work, and not talk unionism, or anything else? I suppose the same rules applied to him that applied to the other men whom they warned against talking about unionism. I suppose he was told, too, was he not?

A. I do not know.

Q. You do not know whether he was given those instructions or not?

A. No, sir.

Q. Well, what I am wondering is this: You expected him to do a day's work—how much did you pay him per hour?

A. I do not know that.

Q. You hired him, and you do not know?

A. I can say that he was earning approximately a certain figure, but I do not know exactly.

415 Q. That is, you gave him a certain figure? Do you mean that he was paid——

A. Well, he was paid a certain figure.

Mr. CARMODY. Well, go on. I am not clear. I do not understand the whole business, myself. I am very much confused about what he was supposed to do.

Mr. KLEIN. I do not believe you want to understand; sir.

Mr. CARMODY. Yes; I do want to understand. I am trying to find out.

Mr. EDWIN S. SMITH. Let me see if I do not want to understand.

Q. Could it be, Mr. Vosler, that the situation was this, that this man had been hired for what you believed was a perfectly legitimate purpose, the purpose of reporting to you, at least in part, on union activities? You said that this morning, that that was a part of his task.

A. Yes.

Q. And that is correct, is it not?

A. Yes, sir.

Q. Incidentally, now, you have not told us what the rest of his task was.

Mr. KLEIN. I was just coming to that, sir.

Mr. EDWIN S. SMITH. All right.

Mr. KLEIN. If I may be given the opportunity.

Mr. EDWIN S. SMITH. Then let me omit any refer-
416 ence to that at the present moment.

Was a part of the reason why you thought it desirable to dispense with the services of this man, that it appeared to you that the other men, who were legitimate employees, might have a suspicion that he was a detective?

A. No.

Q. And was wandering around too much?

A. No, sir.

Q. Well, you do not seriously mean to tell the Board, do you, Mr. Vosler, that you hired a detective and paid $175 per month expecting to get out of him the efficient ordinary day's work of a maintenance man? I mean, you would have hardly have gone to that trouble to get an efficient maintenance man, would you?

A. That was not the only thing; no, it was not. He was also expected to do this outside work.

Q. (By Mr. KLEIN.) But he was a working man?

A. Yes, sir.

Q. (By Mr. CARMODY.) When you refer to outside work, what do you mean by outside work?

A. I mean, aside from his regular duties.

Q. Aside from his regular duties, during his working day?

A. Yes, sir.

Q. He was not supposed to do that inside of his working hours?

A. As I say, he had this work outside of working hours.

417 Q. He did part of his work outside?

A. Yes, sir.

Q. (By Mr. KLEIN.) Well, did he report to you, for instance, if there was something talked about the hours being too long, or something of that sort? Did he report that to you?

A. He would report such a thing as that; yes, sir.

Q. (By Mr. CARMODY.) What happened then, when he reported that?

A. Ordinarily——

Q. What did you do about it?

A. Ordinarily nothing happened.

Q. (By Mr. KLEIN.) It simply gave you an idea of whether a worker, for instance, wanted to work more hours, or shorter hours?

A. We could just get that little "feel", so to speak, of what was going on in the plant; yes, sir.

Mr. EDWIN S. SMITH. Now, let me ask another question along this line:

Q. You believe, I take it—in fact you have said as much—that it is a very human thing to be unsatisfied with one's economic condition; is that not so?

A. Yes, sir.

Q. So that even though you felt that you were paying your men the best wages and giving them the most reasonable hours you could, in deference to your business

418 interests, it would not be a matter of particular surprise to you that the men were not entirely satisfied, would it?

A. No.

Q. No. Now, would expressions of dissatisfaction on the part of the men, or expressions of a desire to better their condition, come under the head of not having the interests of the company at heart?

A. No, not ordinarily; I would not think so.

Q. Well, I still am interested in learning a little more about why you used that phrase, of not having the interests of the company at heart. If it does not apply to expressions of dissatisfaction, or expressions of a desire to better conditions, just what does it apply to?

A. Well, I think that there are a good many things that enter into a man's attitude toward his employer, other than wages and hours, at times. Those are usually the two things that we hear most about, however; it is just a question of more money, either in hourly pay or over a weekly period.

Q. (By Mr. KLEIN.) But you give that consideration, do you not? If the man thinks that he ought to have more money, you consider his report, from his foreman, and you either pay him more money or not; is that correct?

A. That is where it usually comes from—through the foreman.

Q. (By Chairman MADDEN.) Would you really have any difficulty in learning through the foreman, in a per-
419 fectly open and above-board way, what the men were thinking about their wages and their hours?

A. Perhaps not; not always at least.

Q. I do not understand why you would need to employ an undercover man, and pay him this very large wage, and subject yourself to the risk that the men would find out about him, and that there would be a great stir, and a great dissatisfaction, and a suspicion of double dealing.

I do not see why you would expose yourself to that, just to find out what the men were thinking about wages and hours.

Mr. KLEIN. I take the exception to the expression, "double dealing" and all that.

Q. You did get reports, did you not?

Chairman MADDEN. Just a moment.

Mr. KLEIN. I am sorry.

Chairman MADDEN. I should like to have an answer to that question—or perhaps it was not a question.

Mr. KLEIN. I am sorry.

Chairman MADDEN. I just want to give you every opportunity to give an explanation to this Board of what you hired this man for, and I think it is only fair for you to say that I at least cannot understand why it would be necessary to have that sort of an undercover man, to get the general "feel" of your workmen, as you say, with reference to wages and hours.

Mr. KLEIN. If you will let me examine the wit-
ness——

420 Chairman MADDEN. Well——

Mr. KLEIN. As counsel for the Board was given the opportunity, I think I can bring that out for you.

Chairman MADDEN. Well, I must insist——

Mr. KLEIN. It is quite noticeable that counsel for the Board was permitted to proceed without interruption.

Mr. PATTERSON. That is an unfair statement, Mr. Klein.

Mr. KLEIN. I think it is a correct statement.

Chairman MADDEN. I wish both counsel would refrain from any further remarks until I get this question answered.

Now, as I said, Mr. Vosler, we want to give you every opportunity to explain this situation, so if you will, just tell us. We want to have your explanation in full. Do you have anything further to say?

A. It may have been the wrong thing to do. You indicate that in your opinion, it was, and perhaps it was.

Chairman MADDEN. Well, it would appear that it was not necessary, and that you should have known perhaps that it was not necessary, to hire a man for that purpose.

Now, this Board, Mr. Vosler, of course, has the very difficult duty of ascribing motives to certain conduct, and you gentlemen know perfectly well, of course, that in any local operation, it is a difficult thing to ascertain; and yet in many situations it is absolutely necessary that somebody do ascertain that.

421 Mr. KLEIN. I am perfectly willing to have you inquire along that line, Mr. Chairman, but it seems to me that I should be given an opportunity to examine the witness, sir. Here we have this witness, and I do not know how many times he has testified in his life; perhaps never before this; whereas the members of the Board—the chairman in particular is a lawyer of very considerable experience; and, the witness, if permitted to be examined by me——

Chairman MADDEN. Well——

Mr. KLEIN. Will develop that point.

Chairman MADDEN. Did you have in mind developing that point further?

Mr. KLEIN. Yes.

Chairman MADDEN. Very well, then; you go ahead and develop it.

Mr. KLEIN. However, I think he testified about that this morning.

Q. Did you, for some reason or other, want someone to report, working with the men, any undercurrent of feeling one way or the other, about wages, hours, conditions, or attitude toward the employer?

Mr. PATTERSON. That is objected to. The question is leading, and this is redirect examination.

Chairman MADDEN. The objection is overruled.

Mr. KLEIN. He is your witness, counsel.

422 Chairman MADDEN. Go ahead.

Mr. PATTERSON. Oh, no.

Mr. KLEIN. He is your witness.

Mr. PATTERSON. No; he is not.

Mr. KLEIN. You called him at this time.

Mr. PATTERSON. I recalled him for further cross examination.

Mr. KLEIN. Well, there is a rule of the Federal court on that.

Chairman MADDEN. Just a moment now. We are not bound by the statements of counsel here, and we are going to try to get at the facts, without getting the record all cluttered up.

The WITNESS. I did not understand the question.

Chairman MADDEN. Let the question be read.

Mr. CARMODY. Will the reporter read the question, please, to save repetition.

(The question was read by the reporter as above recorded.)

A. Yes, sir; we wanted that information where it was possible to have it.

Q. (By Mr. KLEIN.) And that was one of the functions of this man, was it?

A. Yes, sir.

Q. And one of the other functions, I understood you to say, was to advise you of some of the men who were in the union?

A. Yes, sir.

423 Q. I think you testified about that this morning?

A. Yes, sir.

Q. Did this man also advise you of any arguments that he heard going on about the solicitation of membership, during working hours?

A. Well, I do not recall.

Q. Or do you not recall?

A. I do not recall that he did.

Q. If you were so advised of any such condition, why, then, you would know the general feeling in your plant about those matters, would you not?

A. Yes, sir.

Mr. PATTERSON. Just a moment. That is objected to. He says he does not know.

Mr. KLEIN. No—about general conditions there.

Q. You were trying, were you not, to have a harmonious operation at your plant?

A. We try to have that; yes, sir.

Q. Now, at this regional board hearing, I think in which Mr. Milne was involved: Did one or more of your employees

who were called to testify report to the board that they were constantly bothered during working hours by solicitation of their union membership during working hours?

Mr. PATTERSON. That is objected to. Let them call those witnesses. This man's testimony would be nothing but hearsay.

424 Mr. KLEIN. That is the way the matter came to his attention.

Chairman MADDEN. I think the witness may answer the question. Of course, the Board would like to hear from the employees who made such complaints; but for what it is worth, the witness may answer the question.

A. Well, I do not recall of anything of that sort coming up in connection with the Milne hearing.

Q. (By Mr. KLEIN.) Or any other hearing?

A. There was a second hearing, now, but I am not—I am confused just as to which was which.

In connection with the second hearing, there was some testimony of that sort, of that kind given, but I do not think that was the Milne case.

Q. Did you once have some difficulty, along back 3 or 4 years ago, with a man who was reported to be a Communist, in your factory?

A. Yes, sir; we did.

Q. Do you know of any movement on the part of labor unions as well as factory men, to protect their factories and their labor ranks—their labor unions, from Communists in their ranks?

A. Only from hearsay, and what I have read.

Q. The American Federation of Labor has just initiated such a movement, has it not?

425 A. I noticed that it had done that; yes, sir. I read somewhere of a union having been disbanded because of communistic influence in connection with it.

Q. (By Chairman MADDEN.) Was this four-year-old experience which you have referred to, the last you have heard of any communism in your plant?

A. I do not recall just when it was, but that is the last we have heard of it; yes, sir.

Q. (By Mr. KLEIN.) You are trying, and you always try to protect your factory against any undermining influence; that is correct, is it not?

A. Yes, sir; we certainly do.

Q. And if this man, in compiling those reports, could have gotten such information, he would have reported it to you, would he not?

A. We would expect him to.

Q. (By Mr. CARMODY.) Did he make any such report to you?

A. No, sir.

Mr. KLEIN. I think that is all.

Recross examination:

Q. (By Mr. PATTERSON.) Mr. Vosler, did I understand you correctly to say that the last time you heard about reports of communistic activity in your plant was four years ago?

A. I do not remember. I said, I do not know when it was.

Q. Well, it was three or four years ago, was it?

426 A. That is the last that I recall; yes, sir.

Q. So that there was not any report of any communistic activity in your plant, when you hired the Pinkerton Detective Agency to put a man in your plant, was there?

A. Not right at that time.

Q. No. Well, then, your statement this morning, that that was the reason for hiring this man, was not correct; is that right?

Mr. KLEIN. He did not say that.

The WITNESS. I did not say——

Mr. PATTERSON. Yes; he did say it.

Mr. KLEIN. Oh, no.

Chairman MADDEN. I do not recall that he said that that was the only reason.

Mr. KLEIN. No.

Mr. PATTERSON. He said that that was one of the reasons for hiring this man.

Mr. KLEIN. One of the reasons, but not the only reason.

Mr. CARMODY. He said that was what suggested it to him.

Mr. PATTERSON. Yes.

Mr. KLEIN. Right.

Mr. CARMODY. Yes.

Mr. KLEIN. And I think it was also suggested that the American Federation of Labor had issued a warning against communism.

427 Mr. PATTERSON. That is not what I am getting at.

Chairman MADDEN. Proceed.

Q. (By Mr. PATTERSON). Now, Mr. Vosler, did you ever post a notice in your plant stating this to your employes, that they were absolutely free to join a union if they liked, but you did not want them talking about union activities in the plant?

A. Not that I recall; no, sir.

Q. No. Now, you have testified that you have not heard of any other union meetings being conducted for some time; is that right?

A. Right.

Q. Now, then, is not the reason—or was not the reason that you had Martin taken out of the plant, and that you discontinued the services of the Pinkerton Detective Agency because you thought, and you think that you have gotten the union pretty well broken up?

A. I have not heard of any union activities in the plant lately.

Q. Answer my question please, Mr. Vosler. Did you not have that detective taken out of the plant because there are no further union activities there?

A. They may have had something to do with it; yes, sir.

Q. That had everything to do with is, did it not?

A. It had something to do with it——

Q. Yes.

428 A. Of course.

Q. Now, then, do you know what the sentiment was in the union in your plant after five or six more of those men had been discharged in the early part of July?

A. No, sir.

Q. Now, Mr. Vosler, do you not know that a strike vote there was taken by this union on July the 8th?

A. Yes.

Q. Yes.

A. I heard that there was such a thing done; yes, sir.

Q. Yes. And you heard that from Mr. Martin, did you not?

A. I had a report of it.

Q. Yes. And did Mr. Martin tell you that he appeared at that meeting and openly advocated against a strike?

A. No; he did not tell me that.

Q. Do you know why they took a strike vote?

A. No, sir.

Q. Oh, now, Mr. Vosler, do you not know from the reports that Mr. Martin gave you that they were taking a strike vote in retaliation against these discharges?

A. I do not know.

Q. Is that not true?

A. I do not know.

Q. Well, is that not the report that Mr. Martin gave you?

A. No, sir.

429 Q. What did he say, then?

A. I did not get any report from him, as to why it was.

Q. Well, did Mr. Martin tell you that the question of the discharge of these men was discussed at that union meeting?

A. I do not remember what he said about it.

Q. You do not remember?

A. No.

Q. (By Chairman MADDEN.) Mr. Vosler, you must have been enormously interested in that strike matter, as any company executive would be. You had a man at the very meeting where the strike vote was taken, who was sent there by you for the purpose of finding out what was going on there. Now, really, can you not remember what he reported to you about what the complaint of the men was, and why it was they were discussing a strike?

A. As far as I know, there was no complaint made; we had no complaint filed at our office.

Q. No, of course not. But what did Martin report to you as to this meeting at which the strike vote was taken? What did he say they were going to strike about?

A. He never indicated what they were going to strike about, that I recall.

Q. Well, I should think that would have been the time to get rid of Martin as being too stupid to be of any use to you. Here he is, sitting in a meeting and hearing the discussion, and reporting back to you, as he was paid to
430 do, and he does not even tell you what the complaint of the men is, or what they are threatening to strike for.

A. I do not recall that he did.

Mr. KLEIN. There was no strike, sir.

Chairman MADDEN. But they were talking about a strike.

Mr. KLEIN. How many men?

Chairman MADDEN. How many men?

Mr. KLEIN. How many men?

Chairman MADDEN. Well, enough of them so that any efficient company executive would have been enormously interested in it, of course, and would want to know what it was all about; and yet here he is, the very man who was planted in that meeting, for the purpose of finding out these things, and he does not even mention anything to you as to what it was that the strike vote was all about.

Mr. PATTERSON. Have you finished, Mr. Chairman?

Chairman MADDEN. Yes.

Q. (By Mr. PATTERSON.) Did you ever learn, Mr. Vosler, that the members of the union were talking strike very largely because of the discharge of the men in June and July of this year?

A. Not that I recall.

Q. You never heard about that?

A. Not that I remember.

Q. Now, then, I want to refer you to the allegation
431 that you make in your answer in the latter part of the first paragraph on page 10 where you are describing those employees whom you prefer to keep in your employment, where you say:

And who would most harmoniously work with others in the various production departments, to the end that its production and manufacture of trailers would carry on successfully and profitably.

Mr. KLEIN. Why not read the rest of it also, sir?

Mr. PATTERSON. I am going to do so in just a minute. I am going to ask him about this first, however, and then I am going to read such further part as I care to.

Mr. KLEIN. I see.

Q. (By Mr. PATTERSON.) Mr. Vosler, would you consider a man's union membership one of those things that might make him unharmonious with his fellow employees?

A. Just union membership?

Q. Yes.

A. No.

Q. The fact that he might have talked while he worked, or during his lunch hour: Would that have made him unharmonious?

A. Well, now, you are taking two things together there.

Q. Well——

A. (Continuing.) Time in the plant and time away from the plant.

Q. Well, if he talked about that in the plant, even
432 though it did not interfere with the efficiency of his work, you would regard that as being unharmonious, would you?

A. If he talked about it to any extent at all, it would be bound to interfere with his work, I should think.

Q. Well, now, just to what extent would you say—when then would you say it was within the bounds of reason, and when would you say it was not?

A. Well, that is a very difficult matter to draw a line on.

Q. Well, all right. Now, you go and make this further statement in the answer:

And would inure to the benefit of the respondent, and to the employees of respondent, who would benefit by the continued and successful operation of the business of respondent, by a continued and steady employment.

Would you regard a speech at a union meeting by an employee, in favor of a strike, because he thought that one of his fellow workers had been wrongfully discharged, as giving you grounds to discharge such a fellow?

A. No.

Q. You do not think it would?

A. No, sir; that in itself would not—not essentially.

Q. Well, now, which is right—that which you state now, or what you and your counsel urged yesterday, that you can discharge an employee for any reason, at any time?

Mr. KLEIN. Well, now, that was not stated, as to
433 the merits——

Mr. PATTERSON. Oh, yes.

Mr. KLEIN. Just a moment. If you want to be fair about it——

Mr. PATTERSON. I hope I am.

Mr. KLEIN. I said, in connection with the motion to dismiss, that we must admit the allegations, for the purpose of the motion.

Chairman MADDEN. Well, I do not think that is the point at all.

Mr. KLEIN. Well——

Chairman MADDEN. I think you would be expected to give your client the legal advice that he had the legal right to discharge for any reason or for no reason. Now, he of course would have the other problem, as to whether it was decent to go to the full extent of his legal right.

Mr. KLEIN. Yes; but that is not counsel's statement.

Chairman MADDEN (continuing). As to whether it was economically wise, or whether it would not make more trouble than the legal privilege was worth.

Mr. KLEIN. That was not counsel's statement.

Chairman MADDEN. To go to the full extent.

Mr. KLEIN. That was not counsel's statement, Your Honor.

Chairman MADDEN. No; I agreed that it was not.

Mr. KLEIN. Counsel said that I stated in this con-
434 nection that we admitted that we could fire any man at any time.

Mr. PATTERSON. Well, my dear sir, that is the allegation.

Chairman MADDEN. The objection is sustained.

Mr. PATTERSON. In the answer, and in the motion.

Mr. KLEIN. No, no.

Chairman MADDEN. The objection is sustained.

Mr. KLEIN. Read the entire answer.

Mr. PATTERSON. I will read just what I want to present to this witness.

Further answering said paragraph of said complaint—

on page 10.

Mr. KLEIN. Yes.

Mr. PATTERSON:

the respondent, while denying discharging said employees because of membership in United Automobile Workers Federal Labor Union, nevertheless shows that respondent, as an employer in the operation of a large business and in order to protect its investment—

Mr. KLEIN. That is true.

Mr. PATTERSON:

has the full and unqualified right to discontinue the employment of any of its employees, for any reason it may in its discretion determine beneficial to its business.

Mr. KLEIN. Yes; while denying——

Mr. PATTERSON. Just a moment, that is the statement that he has made.

435 Mr. KLEIN. I do not think that that is a fair statement.

Q. (By Mr. PATTERSON.) Is that what you mean to convey, Mr. Vosler, that you can discharge at any time and for any reason, and at the same time you now say that if a man made a speech advocating a strike, because he felt conscientiously that a fellow worker had been discharged wrongfully, that would not constitute a ground for discharging him—or would you say that did constitute a ground for discharging him?

Mr. KLEIN. Just a moment. That question is speculative and calls for a double-barreled legal conclusion, and I again state that he has that legal right, in my opinion.

Chairman MADDEN. I do not have any doubt whatever that he would rely upon your legal opinion, as to his legal authority.

436 Mr. KLEIN. If he got one.

Chairman MADDEN. Now, he has stated with reference to the moral side of that, that he would not discharge.

Mr. KLEIN. He said not for that alone necessarily, I believe the words were.

Chairman MADDEN. Not essentially were the words. Wasn't it something like that?

Mr. PATTERSON. Yes.

Chairman MADDEN. I don't see what profit there is in pursuing further this distinction between what has been pleaded and what may be business practice.

Mr. PATTERSON. Well, I will not pursue it further, Mr. Chairman.

Q. (By Mr. PATTERSON.) Mr. Vosler, do you remember when the president of this union was discharged?

A. No; I don't.

Q. Well, did you know when he was discharged; did you know about it at the time?

A. Within a reasonable time afterwards, I expect I knew it.

Q. And who was the president of this union; Steve Sprytzer?

A. Steve; that is right.

Mr. KLEIN. This line of questioning, of course, is all subject to the early objection that it all antedates the date of the Wagner Act.

Chairman MADDEN. Objection overruled.

437 Mr. KLEIN. Same exception to the entire line of questioning.

Q. (By Mr. PATTERSON.) Would it refresh your recollection, Mr. Vosler, if I told you that Mr. Sprytzer was discharged on the 2d of July?

A. I do not recall the date; no.

Q. Do you recall why he was discharged?

A. No; I don't, now.

Q. Did you know at the time?

A. At what time?

Q. At the time he was discharged, why he was discharged?

A. I expect I did. I don't remember the details at all.

Q. Did you know that the foreman put on his discharge slip after consultation with the employment manager, "non-cooperation with men"?

A. I don't know what he put on it.

Q. Well, did you know that?

A. I don't remember anything about it.

Q. That does not refresh your recollection on the subject at all?

A. No, sir.

Q. Now, you made a comment during your redirect examination that there were 72 men laid off or dismissed in the latter part of June and early July; is that right?

A. I think that is right.

438 Q. How many men were hired during that period?

A. I couldn't answer that.

Q. How many of those 72 men were members of the union?

A. I don't know that definitely.

Q. Do you know as a matter of fact that all of those 72 who were laid off or discharged in that period were members of this union?

A. No, sir; I do not.

Q. They might all have been members, so far as you know?

A. I don't think they were, from anything I know.

Q. I said, so far as you know they might have been.

Mr. KLEIN. Oh, that calls for a conjecture.

Mr. PATTERSON. Oh, it does not call for any more conjecture than his answer.

Chairman MADDEN. Counsel should not argue with each other.

Mr. KLEIN. I wanted to interpose an objection. I meant it as such. That calls for a pure conjecture. He said he did not think they all were.

Mr. PATTERSON. May it please the Board, he said he did not know but he thought that some of them were not members of the union.

Mr. KLEIN. Correct.

Mr. PATTERSON. Now, that is an uncertain answer.

Chairman MADDEN. Do you have another question?

439 Mr. PATTERSON. I just now propounded the question.

Q. (By Mr. PATTERSON.) Mr. Vosler, you don't know of your own knowledge but what all of them might have been members of the union?

Chairman MADDEN. The objection is overruled. He may answer.

A. I don't know.

Mr. PATTERSON. All right.

Q. (By Mr. PATTERSON.) Can you tell us, Mr. Vosler, how many new men were hired the last week in July?

A. No, sir; I can't.

Q. Can you tell us how many new men were hired in August?

A. No, sir.

Q. Can you tell us how many new men were hired in September?

A. I don't know.

Q. And you can't tell us how many new men were hired during the first three weeks of July?

A. No, sir.

Mr. KLEIN. You can get that information, if you want it.

Mr. CARMODY. I think we ought to have it.

Mr. PATTERSON. I think that is all.

Mr. CARMODY. We ought to have it by days for July, August, September, and October, the dismissals and the hirings on different days in those months.

Mr. KLEIN. Can you get it?

440 Chairman MADDEN. Do you know, Mr. Vosler, how many men were laid off or discharged on this seasonal let-up after the 5th of July?

The WITNESS. No, sir; I don't know.

Chairman MADDEN. There are six men involved in this complaint. I should suppose that they were all union men. I just wondered whether there were other men laid off or discharged after that time.

The WITNESS. There were additional men laid off after July 5th. I know that.

Chairman MADDEN. All right.

Redirect examination:

Q. (By Mr. KLEIN.) If there were any missing inventory or parts, would it be the duty of this man Martin you had working in the factory, to report that and keep an eye on that for you, to protect your property?

A. If he saw anything wrong along that line.

Q. (By Mr. CARMODY.) Where would he get that information?

A. It would be just observation.

Q. During what period of time would he make that observation?

A. During the day.

Q. Where would he make it?

A. Among the group he was working with.

Q. I thought he was dismissed because he was not spending his full eight hours a day on the job as a maintenance man?

441 A. He didn't work as a maintenance man all the time, I don't think.

Q. What was he doing the rest of the time?

A. He worked in the assembly department.

Q. Could we see his employment record to show what he did from day to day? He had a time card, didn't he?

A. Yes.

Q. Could we see those time cards from the time he was employed until he went out, to see what is on them?

A. Yes.

Mr. KLEIN. We will furnish the record, sir.

Mr. CARMODY. That is all. May I ask another question there?

Q. (By Mr. CARMODY.) If I remember correctly, Mr. Vosler differentiated between a man's union activities while he is at work and while he is away from work. What I would like to know is, Mr. Vosler, what good do you think it does for a man to belong to his union away from his work?

A. I never saw that—I can't answer that; I don't know.

Q. Well, what is the object of joining a union?

A. I don't know that either. I never belonged to a union.

Q. Well, do you mean as an executive, a responsible executive in a manufacturing plant where some union men are employed, where you say you have no objection to their membership, that you don't know the object of be-

442 longing to a union, a trade union, a labor union?

A. As far as I am concerned, I don't. I never belonged to one.

Q. Well, is there no way to learn the objectives of trade unionism except by belonging to a union, in your opinion?

A. I would not say that that is the case, sir.

Q. I have never belonged to one, either, but I have some notion, I think, of the objectives of trade unionism and the motives that inspire a man to join a union.

Wouldn't you think that it is to better his condition where he works?

A. That is probably one of the objectives that are held out to him.

Q. Well, if a man believes in trade unionism, and if a man believes that a union can help him better his economic condition, don't you think he has the right to solicit the other workmen to become members of the same union?

A. At what time?

Q. I don't distinguish the time.

A. I don't think his attention during the day should be given to that.

Q. Well, let us assume that he loses no more time in that sort of conversation than he would in discussing baseball. Then would he have a right to do it? You don't employ deaf mutes, do you? They are not all mutes?

443 A. No, sir; no, sir.

Mr. KLEIN. But he has pointed out, I believe, that where the argument goes on to the extent of creating inefficiency and ill feeling, they don't want it during working hours.

Chairman MADDEN. His last statement on that, Mr. Klein, was that any union discussion to any considerable extent would be in violation of his order and would be a cause for discharge.

Mr. KLEIN. During working hours.

Chairman MADDEN. Yes; during working hours. Of course, that is to the foreman who apparently does this discharging a perfectly unlimited discretion, because no one can tell whether I have talked about something to any considerable extent—whether I have just talked about it casually or whether I have talked about it a great deal.

Mr. KLEIN. Well——

Chairman MADDEN. I mean all of that is so perfectly unmeasurable it is just up to the foreman.

Mr. KLEIN. Well, Mr. Madden, if I were to hear you in conversation or hear two men in conversation and one says to the other, "You ought to join the union for this reason", and the other says "I don't want to join", and the first fellow says "Well, we are organizing here. You ought to join. It will do you a lot of good", and they get pretty heated about it, a foreman can tell whether they are slowing up the work or not.

444 Chairman MADDEN. That wasn't the rule. The rule was if there was union discussion to any considerable extent it would be cause for discharge.

Mr. KLEIN. Well——

Q. (By Chairman MADDEN.) Can we possibly be wrong? Have we misunderstood you about that, Mr. Vosler? That was the rule as you stated it?

A. I think that is as I stated.

Chairman MADDEN. Now, would you be good enough to let it stand at that or to ask further questions?

Q. (By Mr. KLEIN.) Well, your foremen—were your foremen instructed to discharge for just a conversation or were they warned about it stirring up differences during working hours?

A. It was when the differences were brought out that time was wasted, and that is when it became noticeable and brought to their attention.

Q. But the rule generally was to stop union solicitation during working hours altogether, as the chairman said?

A. It was; yes, sir.

Mr. CARMODY. You see, my difficulty is this. I will state it and then ask a question. My difficulty is: According to the record here there is no factual basis for comparing the efficiency of the shop yesterday with the total efficiency of the shop the day before. There is no evidence here that the company has a record. Therefore, how can anybody
445 say whether a conversation that was held yesterday resulted in total efficiency for the company than a conversation of the day before that was half its length about a totally different subject?

Mr. KLEIN. That is for the foreman to determine, sir. He is in charge of that division and has got to use his best judgment about it.

Mr. CARMODY. What is the value of the foreman's judgment on the total efficiency of the plant?

Mr. KLEIN. Well, he sees that the work is supervised and he has a general idea of whether the men are working efficiently or not, and when he does not produce efficiently, then the foreman is not doing his work. And they have had foremen there for a great many years and they rely on their judgment.

Chairman MADDEN. Mr. Klein—excuse me.

Mr. CARMODY. Go ahead.

Chairman MADDEN. Are you finished?

Mr. CARMODY. I am finished. I am sort of washed up trying to find out the relative efficiency from day to day in this factory.

Q. (By Chairman MADDEN.) Mr. Vosler, just as a part of the background of this whole difficult question, I should welcome a statement from you into the record of what you as a company executive think of unionism?

Mr. KLEIN. Well, I think that is asking for an opinion that has no bearing in this proceeding.

446 Chairman MADDEN. I think it would have. I think it would be very helpful to the Board if you would be willing to let your client state it.

Mr. KLEIN. What his general opinions may be as to how serviceable or how much good a union does, or whether they accomplish their objectives, I don't think is pertinent to this issue as to whether or not these men were discharged because of union activities. I think it is open to that objection.

A. I don't know enough about unions to pass any opinions on them. I never was in a union. I never was affiliated with a plant where there was a union, any other than this experience that we have had right here. So I don't consider myself in a position to pass judgment.

Q. (By Chairman MADDEN.) You wouldn't care to say that you think in general they are a bad thing and a thing which interferes with the efficiency of plants?

A. I don't know enough about them to pass judgment.

Chairman MADDEN. That is all.

Q. (By Mr. CARMODY.) You are not afraid of unionism?

A. I don't know anything about it. I don't know enough about it.

Q. Well, why did you hire Mr. Martin?

A. I tried to explain that this morning.

Q. You say that it was partly to find out about these union activities; you said that, didn't you?

447 A. I think I did.

Q. And if you know nothing about it and have no interest in it, I wonder why you hired the man and why you went to a detective agency that is widely known and has been widely known for many years as a ferret in union activities?

Mr. KLEIN. I think we are getting confused. The chairman asked him what his general opinion was about unionism generally—not about it specifically—and he says he does not know enough generally about it to say whether they serve their functions or not.

Mr. CARMODY. Well, you know enough about it to be afraid of it. He admits he hired a detective to ferret out their activities.

Mr. KLEIN. He admits that he did that.

Mr. CARMODY. Then he knows it.

Q. (By Mr. KLEIN.) Mr. Vosler, this noon your attention was called to a statement with reference to giving Mr. Halpin a list. I wasn't sure whether you understood the question, or whether you clearly answered it this morning. Your attention was called to that, whether he got the list of any men.

A. He did have the list of certain names. If I said he did not have, that was a mistake on my part. I did not mean to say that.

Q. You want to clarify the record?

A. I want to do that, if that was what I said.

448 Mr. CARMODY. What was the question this morning?

Mr. KLEIN. I am not sure how he answered it.

Mr. CARMODY. What was the question?

Mr. KLEIN. The question generally was if Mr. Halpin got any of the names of men who were in the union, as they came to Mr. Vosler's attention.

Mr. CARMODY. From Martin's list?

Mr. KLEIN. In any way. And I was not sure how he answered it, and I wanted to have it fairly stated and so I asked him about it and he said if he did not so state he wanted to correct it.

Mr. CARMODY. What does he say now?

Mr. KLEIN. As he says now, Mr. Halpin did get some of the names.

Mr. CARMODY. From Mr. Martin?

Mr. KLEIN. From Mr. Martin.

Q. (By Chairman MADDEN.) You said this morning that you made no notation of any of these Pinkerton reports, that you put them all in the fire, in the boiler. Now, apparently you want to correct that too, do you not?

A. Well, to that extent I do; yes, sir. So far as some of these names on that list, I did give them to Mr. Halpin.

Q. Now, it would have seemed very natural that you would have noted all of those names as they were given to you; didn't you, in fact?

449 A. There were names brought up in a report that I paid no attention to at all. He just asked some words in conversation, and the matter was reported and it appeared inconsequential and was destroyed.

Q. The names of those who were engaged in union activities, didn't you keep a record of those?

A. I think those names for the most part were turned over to him.

Q. (By Mr. PATTERSON.) To Mr. Halpin?

A. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) Mr. Vosler, I wonder if I could state something which I can see from the general line of your testimony to be your attitude in regard to unionism. You can tell me perfectly frankly whether I am correct or not.

Was it not your feeling that unions had a tendency to—that joining a union had a tendency to keep the men stirred up, cause them to be somewhat dissatisfied with their jobs, and possibly for that reason make them less efficient workers?

Mr. KLEIN. I do not believe the witness said that.

Mr. EDWIN S. SMITH. I did not say that he said that. I

said I am trying to find out if that might be an approximation of what his attitude was, and why he was anxious to find out if the men had joined the union.

Mr. KLEIN. I understood him to say that if they agitated during working hours it would have that tendency.

450 Mr. EDWIN S. SMITH. He is perfectly at liberty to refuse to answer my question if he wants to.

Mr. KLEIN. Oh——

The WITNESS. I did not understand.

Q. (By Mr. EDWIN S. SMITH.) I say, was your attitude approximately this: That if the men joined the union they were likely to get stirred up over it and become dissatisfied with their jobs and possibly for that reason less efficient on their jobs?

Would that have represented your fears as to unionism?

Mr. KLEIN. That calls for a general conclusion, but he may answer.

Mr. EDWIN S. SMITH. I know. I appreciate that.

A. I scarcely know how to answer your question, Mr. Smith. It apparently resolves itself into one of whether the union was going to be of any advantage to the plant or not.

Q. (By Mr. EDWIN S. SMITH.) Well, what I am trying to get at is this, and I think perhaps you owe it both to yourself and to the Board to try to make this situation clear. It is apparent you were concerned over the fact that the men were joining the union, because otherwise you would not have hired this agency to find out more about it. Now, you specifically stated that this information was gathered not for the purpose of getting rid of the men who joined the union. It may have had some purpose in your

451 mind to justify the expenditure and find out what it was all about, and I am not clear and I doubt if the other members of the Board are clear as to just what use you intended to make of this information. If you found that the men were dissatisfied with their wages or hours did you intend to call them in and discuss it with them, or if they intended to better their condition? The immediate disposition of these documents—what did they mean to you?

You said they were not used to discriminate against the men. What did that part stand for in your mind? What did you learn from it and what did you intend to do about it? Do you see the point I am trying to get at?

A. Well, we had this information available to us to know what was going on in the union, but we still did not make either unionism or nonunionism a matter of employment.

Q. (By Mr. KLEIN.) Mr. Smith asked the question whether you heard of dissatisfaction or their wanting longer

hours or shorter hours, or higher wages, or anything else, whether that would be information that you would want to have noted to guide your conduct with reference to those questions—at least I gather that was your question?

Mr. EDWIN S. SMITH. Well, I am speaking from a background which Mr. Vosler may not be familiar with. It is perfectly well known to any student of labor history in this country, and industrial conditions, that people have employed detective agencies to detect the activities
452 of their workers, and have dismissed their workers when they found they belonged to an organization.

Q. (By Mr. EDWIN S. SMITH.) Now, you have stated categorically to the Board that you did not intend to make use of this information for that purpose, and it would tend to clear the minds of the Board of suspicion in that regard if you could explain just what use you intended to make of these reports, after you got them.

If you were not going to use them against the men, what were you going to do?

A. Simply to keep informed of what was going on. We did not use them as a basis of discharging the men, which is evidenced by the fact that we have not discharged all the union members we have heard of around there.

Mr. EDWIN S. SMITH. All right.

Mr. CARMODY. Isn't the partial answer, Mr. Smith, the fact that, as he himself testified, he turned the list of names over to Mr. Halpin and Mr. Halpin had carte blanche to discharge men and Mr. Halpin did discharge men—for what reason we don't know now—but did discharge men whose names were on the list?

Mr. KLEIN. And many of them were left working there and continue to work there.

Chairman MADDEN. Do you mean there are men whose names were on that list—on those lists—who are still
453 working there?

Mr. KLEIN. Oh, yes.

Mr. CARMODY. Are those lists available?

Mr. KLEIN. Yes.

Q. (By Mr. CARMODY.) Can those lists be made available, that you gave to Mr. Halpin?

A. Yes.

Mr. CARMODY. Your counsel has stated that some of the men are still working who were on the list. We would like to see those lists.

Mr. KLEIN. Yes.

Q. (By Chairman MADDEN.) Do you say that some of the men whose names are on those lists are still working for the company?

A. Yes.

Q. (By Mr. CARMODY.) So the lists are available, and we can see them?

A. I am not sure whether they are available now, but I am sure we did not discharge every man whose name was given us as a union member.

Q. May I ask one more question? I realize it is getting late and you have been on the stand a long time. I do not want to bore you. I understand you to say that you have had no experience in dealing with organized labor. Now, I am trying to talk to you again as one factory manager or production manager to another. Unlike you, I have
454 had the experience of managing a plant where there was no union or organization of any kind, and later on managing a plant where we had one of the first company unions organized in this country that maintained its existence for a long time, and later on managing a plant where we had to deal with a regular, standard labor organization.

Of course in that process I met with committees of men to find out what they wanted, sometimes at their request and sometimes at my own.

Do you believe that you discovered from Mr. Martin anything about the men's wishes that you couldn't have got from an independent and frank committee representing the men, whether union or nonunion?

A. I don't recall that we did.

Mr. CARMODY. That is all.

Mr. PATTERSON. I have no further questions.

Chairman MADDEN. Are you all through with Mr. Voeler?

Mr. PATTERSON. All through.

(The witness was excused.)

Chairman MADDEN. We will recess for five minutes.

(Whereupon a short recess was taken after which the proceedings were resumed as follows:)

Mr. PATTERSON. Will the following witnesses stand up and raise their right hands so that they can all be sworn at once?

Nick Trusch, William Weinmann, Arthur Beck, William Milne, Arthur Hillman, Leonard Chaloux, Richard
455 McClure, John Beethway, and J. L. Peterson.

(The above mentioned witnesses were duly sworn.)

Mr. PATTERSON. Mr. Trusch, take the stand.

Mr. CARMODY. How do you spell his name?

Mr. PATTERSON. Nicholas Trusch, [spelling] T-r-u-s-c-h.

NICHOLAS TRUSCH, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

DIRECT EXAMINATION:

Q. (By Mr. PATTERSON.) Will you give the Board your full name, Mr. Trusch?

A. Nicholas Trusch.

Q. Where do you live?

A. 97 Woodlawn, Detroit.

Q. And what is your trade?

A. My trade is carpenter and body builder.

Q. For how long have you been a carpenter and body builder?

A. So long as I have been here in this country. I have been for five and a half years a body builder.

Q. And before you were in this country?

A. I was in Germany.

Q. You were in Germany working at the same trade?

A. I was a carpenter in Germany.

Q. Are you a naturalized citizen, Nick?

A. Yes, sir.

456 Q. Married?

A. Yes.

Q. Do you have a family?

A. Yes.

Q. How many children?

A. Three.

Q. When were you hired by the Fruehauf Trailer Company?

A. The 15th of February 1930.

Q. That was right after you came to this country?

A. Yes, sir.

Q. And for how long did you work for the Fruehauf Trailer Company?

A. From that time on—from the 15th of February 1930 to the 15th of July 1935.

Q. And during your employment by the Fruehauf Trailer Company what particular line of work did you do?

A. Well, when I started by that company I started from the floor, from the body department, and after the five years I was all the way through to every kind of body that was built by the Fruehauf Company. I was on every job.

Q. Now, who was your foreman, Nick?

A. Mr.——

Q. At the time you were discharged?

A. Mr. Rosenbusch.

Q. Did Mr. Rosenbusch ever make any complaint

457 to you about the character of work that you did, the quality of your work?

A. Yes.

Q. What did he say to you?

A. Well, sometimes I asked him for a raise, or something like that, and he would say, "Well, Nick, you have got the highest wages here in the plant. You are a good workman but it isn't I who can give you a raise."

And a year and a half past I worked on special jobs on doors and tail gates. I built them in stock. And from that time on when I was on those jobs I figured out that I was making over 100 percent more than when I started on the job because I made them all on my own ideas.

Q. How much were you making per hour, Nick, at the time that you were discharged?

A. 64 cents.

Q. Did your foreman ever complain to you about the quality of your workmanship?

A. Yes. He could sometimes not believe how I could make so much. And one time he came over to my room and he said, "Nick, show me that order for these doors", and it was a set of doors for ten—ten pairs of doors—and he said, "Why—where have you got that order?" I said, "The order is through and it is in the office." And he said, "It is not possible." And he went back to the office and he took the time slips out and he said, "You worked 10½ hours
458 on 10 pairs of doors. It is not possible that you could make 10 pair in that time." And I said, "When the time slips show that, that is correct."

Mr. CARMODY. He complained because he did too much; is that it?

Q. (By Mr. PATTERSON.) Now, Nick, did you ordinarily have a helper to help you with your work, or two helpers?

A. In the first six to eight months I did the job by myself alone and after that I could not handle it and I had a helper.

Q. And did you have a helper at the time you were discharged?

A. Yes, sir.

Q. Who took over your job?

A. Well, I don't know. My helper has still got his job that he had when I was there, and then they put a different man on and I don't know that man.

Q. Was the man who took your job as old a man with the Fruehauf Company as you were? Had he worked—had the fellow—withdraw that.

Did the fellow who took over your job have as long service with the Fruehauf Company as you had; had he been there five and a half years?

A. I don't know; because I don't know that man who took my job.

Q. You don't know him?

A. No.

Q. Well, Nick, on the day you were laid off, who laid you off?

A. Mr. Rosenbusch.

459 Q. What time of day were you laid off?

A. The 15th of July.

Q. Do you remember what time of day it was?

Mr. CARMODY. What hour?

A. Well, it was, I think, about 9—between 9 and 10.

Q. (By Mr. PATTERSON.) And what time had you started to work that day?

A. I think seven o'clock.

Q. Mr. Rosenbusch discharged you; is that right?

A. Yes, sir.

Q. What did he—just how did it come about? Tell the Board what happened when he discharged you.

A. Well, I was surprised that day in the morning when I went to ask him something. When I started at 7 o'clock I had to ask him something about the doors. I had to put different metal on and he said, "Nick, leave that go and after a while I will tell you that." And he was nice to me. About 9 o'clock he came out and said, "Come in the office." Then he said, "Nick, you joined the union." I said, "Yes." And he said, "What do you want? Do you want your job or your union?" I said, "Well, Herman, I be here to do my work and the work that the company is satisfied with me. What does that have to do that I join the union? That is my business."

He say, "Well, I ask you again: Do you want your union book or do you want your job?" I said, "Herman,

460 I change not my mind in ten minutes what I be now in for 15 to 18 years." I say, "You misunderstand it." I talked German with the boss.

Q. (By Chairman MADDEN.) You did talk German with him that day?

A. Yes. I talked German. Maybe I make a mistake in the talk. To talk so good I can't. And he say "Well, I ask you again: Do you want your book—do you want your job or leave the union go?" I said, "No, Herman. I change not my mind." And he say, "Well, Nick, you have been now five years here and you have got all the time a job." I said, "Well that has nothing to do with that. You were all the time satisfied with the job I do here and it is not my fault when you come now and you say I have to go on account I be a member of the union."

Well, he say, "Nick, I feel sorry. They come not from me." And he got in his left hand the list, and he say, "Everybody who is going to be on that list the first, they are not going to be here in the plant." Well, I said to Mr.

Rosenbusch, "Do I have to go right away?" And he say, "Yes." And I step out and I go take my tool box and I go down to the employment office and they gave me a slip, you know, that slip what is marked on, "Re-hire"? Yes. That is all that was marked on that slip, and I go down to the employment office and I was by Mr. Larson.

Q. (By Mr. PATTERSON.) Mr. Larson was the employment manager, is that right?

461 A. Yes.

Q. Yes. Go ahead.

A. And he said, when he see me come with my tool box, "Well, Nick, what is the matter with you?"

"Well", I said, "they fired me."

He said, "Why?" And I said—I was so nervous that day—I said, "Here, you have got that slip." And he said, "Nick, what is the matter with your slip, you be fired?"

And he said, "You got a good record." And I said, "Oh, I think that means nothing here. That is nothing. That is all." "Oh, no", he said, "Nick I feel sorry for you." He said, "Come on, try to do something." I said, "There is no use to try to do something." He said, "Well, come on." I said, "Well, when I went to talk with the office with Mr. Fruehauff, they said, 'No, he is not here.'"

And he said, "Go by the superintendent, Mr. Halpin", and he said, "Here, Mr. Halpin, this man is fired and he has got a good record."

Q. The employment manager said that to Mr. Halpin?

A. Yes.

Q. Did Mr. Larson then leave?

A. Yes; he did.

Q. Then what was said between you and Mr. Halpin?

A. Mr. Halpin said, "Sit down. What is your name?" I gave him my name. He said, "How long have you

462 been here in the factory?" I said, "Five and a half years." He said, "See, you have got an old-time job." I said, "Yes; I think the company must be satisfied that I am a good working man. Otherwise I would not be here so long." And he said, "Why have you been fired?" And I said, "They told me because I joined the union."

And he said, "You see, you must stick with the company and not with the union." And I answered him, I said, "I thought I stuck with the company for five and a half years and I did the best I could do and all a man can do." And he said, "That is right. The company gave you your bread." And I said, "And I gave them my brains and my bones for it."

And he said, "Is that your mind?" And I said, "Yes." And he said, "You will not change your mind?" And I said, "No." And he said he would not change his mind,

either. And that was all I talked with Mr. Halpin, and I go and I stepped out.

Mr. PATTERSON. You may take the witness.

Mr. KLEIN. Surely. You have rehearsed him very well, Mr. Patterson.

Mr. PATTERSON. I resent that imputation, Mr. Klein.

Mr. KLEIN. There is no imputation at all.

Mr. PATTERSON. It is.

Mr. KLEIN. You don't deny that you talked to him, do you?

Mr. PATTERSON. I certainly don't. You don't suppose I would be foolish enough to call a witness without
463 talking to him. But I did not coach him.

Mr. CARMODY. Well, the witness is available for cross examination. Go ahead.

Mr. KLEIN. It will be very brief.

Cross examination:

Q. (By Mr. KLEIN.) Mr. Trusch—is that the way you pronounce it, Trusch?

A. Yes.

Q. What work did you do in the factory?

A. In the past year and a half I used to make those stock doors and tail gates.

Q. The doors for the trailers in the body department?

A. The doors; yes.

Q. And the material was brought to you to work with, wasn't it?

A. Well, no. That was different. In the time I was there, sir; when I started on the job five or six men had been there before doing the job and I can tell you the company was not satisfied with any of those men and they changed the men. He made not enough.

Q. But I mean when you work on the body there is material that you work with. You have to do carpenter work, do you not?

A. I take the stuff I need to build the doors and tail gates—I take the stuff myself over there from the lay-out men. Everything I need for that I take myself
464 except the metal that goes around the doors. They bring that up from downstairs. There was a stock chaser and he brought it to me.

Q. Someone brings the material to you and you take that material and start to work on the door of the body or whatever you do; is that correct?

A. Yes.

Q. And you did that at the Harper Avenue Factory in Detroit?

A. Yes.

Q. And you worked by the hour?
A. Yes.
Q. And you got paid by the hour?
A. Yes.
Q. You felt, of course, that any time you wanted to quit you could quit working at the company, didn't you? In other words, no one made you work at this company? You could quit any time you wanted to?
A. Oh, yes; sure.
Q. You felt that way, didn't you?
A. Sure.
Q. And your wages—you got increases of wages from 1933 to late in 1934, didn't you?
A. Well, I don't know. There was a lot of difference in the wages. I started with 70 cents when I came over here. when I had no experience and after that when I got
465 experience I got 64 cents. [Laughter.]
Q. Well, wasn't it a matter of fact that in 1933 that you were getting 46 cents only?
A. 93?
Q. 1933. You were getting 46 cents an hour?
A. 46.
Q. Yes.
A. Well, at that time I think I got the highest wages at that time, 46.
Q. That is what you got, didn't you?
Mr. CARMODY. You mean the rate fell from 70 cents to 46 cents an hour?
Mr. KLEIN. I don't know what he started at. I know that in 1933 he was getting 46 cents an hour.
Q. (By Mr. KLEIN.) Is that correct?
A. Well, that must be; I can't say.
Q. And the wages generally at that time were low?
A. The lowest was 42.
Q. And during 1933 and 1934 you were given four different wage increases, weren't you, by the company?
A. Well, that must be; I don't know.
Q. And you finally—the last increase was up to 64 cents an hour, was it not?
A. Yes.
466 Q. Now, did your foreman ever refuse to talk to you about your working conditions there? Did he ever say he would not talk to you?
A. Mr. Rosenbusch?
Q. Yes.
A. He was all the time nice to me.
Q. He always talked to you, didn't he?
A. Yes.

Q. And if you had some question about your wages or about your hours or about your work, he would talk to you about it, wouldn't he?

A. Oh, yes. He was all the time nice to me except when I would ask him about more wages. Then he would say "It is not possible."

Q. You got five wage increases, though, did you not; your pay was raised five times?

A. Well, sure.

Q. From 1933?

A. Yes.

Q. He could do it in those times, couldn't he?

A. Well, I cannot understand right what you mean.

Q. I mean he gave you raises in pay in those times, didn't he—or the company did? You got more per hour from 1933 on at five different times than you did in 1933, did you not?

A. Yes.

467 Q. Now, then, you realize that there are other good carpenters working at the Fruehauf Trailer Company, aren't there?

A. Oh, yes.

Q. There are a lot of good carpenters, aren't there?

A. Yes.

Q. There are a lot of men who don't belong to the union at the company, aren't there?

Mr. PATTERSON. If he knows.

Mr. KLEIN. If he knows.

Answer. Sure, they have got a lot of men over there who do not belong to the union.

Q. (By Mr. KLEIN.) Who do not belong to a union?

A. Sure.

Q. And did you at any time ask any of these men to join the union?

A. Well, I say not, "no." Sure, I asked some of them.

Q. You did?

A. Yes.

Q. And isn't it a fact that you talked to them about joining the union during the working hours?

A. Well——

Q. Some men?

A. I cannot say "Yes", because on that job I was in a room and we worked with two men in that room.

Q. Yes?

468 A. And I was so busy for the past year and a half that I got no time to talk with somebody. But 25 or 30 men came every day in that room and they have to talk to me when they want some doors. We have 15 or 16 different size doors, and——

Q. But that is not the question.

A. Well, they come in all the time and ask me and I have got no time to talk about the union.

Q. Did you ever talk to anyone in the factory during the working day about joining the union?

A. Well, what do you mean, between working hours? At noontime, that is my time.

Q. Well, I am just asking you whether you did.

Chairman MADDEN. Do you mean at noontime?

Q. (By Mr. KLEIN.) Up to noon—in the morning?

A. In the morning? Well, maybe we start before 7 o'clock.

Q. Weren't you anxious to get members in the union? You have been in the union 17 years?

A. Well, sure. On my time when somebody asked me something I answered him, sure. I tell him sometimes, "Why you not join the union?" And he say, "Well, I come over some time but you have got so many different peoples there we are afraid to go over there and join the union. When you have a meeting the boss he knows the whole thing of what happens over there." And he say, "We are afraid to come over there."

Q. Didn't you ever talk in the factory and when a
469 man did not want to join the union, didn't you tell him, "Well, you want to join the union. You want to come into our union. It is a good thing for you." Didn't you ever tell him that during shop hours, that you were anxious to get him in? Weren't you anxious to get him in?

A. I will not say "Yes".

Q. And you won't say "No"?

A. I will not say "Yes" and "No."

Q. Oh, you will not say "No", that you did not talk to him?

A. I talked to him in the morning and at noon.

Q. During working hours?

A. The boss knows what kind of job I got over there and I have not time to go in the body shop inside and talk to the people about the union.

Q. Didn't Mr. Rosenbusch, your foreman, warn you about arguing with men to join your union while you were working, a number of times?

A. I would like to have you explain that.

Q. Didn't Mr. Rosenbusch tell you that the company did not want you to solicit union members—try to get union members while you were working?

Mr. Rosenbusch?

Q. Yes.

A. No. Eight days before he fired me——

Q. Didn't he tell you that?

470 A. No, he tell me that different.

Mr. PATTERSON. Let him answer.

Mr. KLEIN. Yes.

A. (Continuing.) He called me in the office and he say "Will you keep your job?" I was surprised, and I said "What is the matter now?" And he say "I ask you again, do you want to keep your job?" And I say "What is the matter, did I kill somebody or something?" He say, "I have been watching you now for two or three weeks, and you talk with everybody that comes in that room." And I say, "Herman, how I should do that?" We have got a planer in that room and a band saw and it was not allowed that everybody should go near that planer. And everybody would come in that room—the room was full every day and they bothered me and I did that work on that planer for those people. And it was not allowed, only the door hanger, to go near the machines. And they bothered me all the time. Besides that, 25 or 30 people have to come in that room every day. Lots of men came in and wanted something, wanted to know something and they would ask me. My gosh, how should I do that? In one way I had to keep my mouth shut and in another way I had to tell them.

Q. (By Mr. KLEIN.) Didn't he tell you not to bother men about the union while you were working?

A. No. He said I should not talk so much.

Q. About the union?

471 A. No; he said nothing about the union.

Q. And isn't it a fact that the day you were let out he called you in and told you that—he told you a number of times not to talk about the union while you were working, and you had not followed that policy of the company or that request of the company, and, therefore, he was going to lay you off because you insisted on and you were always talking about the union while you were working; didn't he tell you that?

A. What did I tell you before?

Q. Do you say "No" to that? Do you say "No" to that question?

A. Well, I don't understand that right.

Q. Well, did Mr. Rosenbusch the day you lost your job there——

A. Yes?

Q. Tell you that the reason you were being let out or discharged was because he had asked you a number of times not to talk about the union during working hours and you nevertheless did talk about the union during working hours?

A. He did not talk about—he did not tell me,

Q. You say "No" to that?

A. I say "No."

Q. All right. That is just what I want to find out. Have you tried to get another job since you left Fruehauf?

A. I am still on the welfare.

Q. Did you try to get another job?

472 A. Yes; I was many, many places.

Q. And you have not been working since then?

A. No.

Mr. KLEIN. That is all.

Mr. PATTERSON. That is all, Mr. Trusch.

Mr. CARMODY. May I ask one question there?

Mr. PATTERSON. Surely.

Q. (By Mr. CARMODY.) When did this discharge take place?

Mr. PATTERSON. You answer that.

A. The 15th of July.

Mr. CARMODY. And this is what day in November?

Mr. PATTERSON. The 7th.

Mr. CARMODY. The 7th of November.

Q. (By Mr. CARMODY.) You have lived in Detroit since July 15th until today?

A. Yes, sir.

Q. You have had five and a half years' experience on body work?

A. Yes, sir.

Q. In the automobile business?

A. Yes, sir.

Q. Have you heard that it is reported that skilled labor is scarce in Detroit?

A. I don't——

Q. You have not heard that?

A. I don't understand that.

473 Q. Well, what I have to say is this: I have been told before I came to Detroit and since I came to Detroit two or three days ago that there is so much work here that the automobile factories cannot get enough skilled mechanics; have you heard that?

A. Yes.

Q. Now, why is it so hard for you to get a job at your trade in the busy automobile business in Detroit?

A. Well, I was at many places and they said, "Come tomorrow", and we have to make an application.

Q. Yes.

A. I think I make—about six places in Detroit in the factories I make an application, and you have to mark on where you worked before.

Q. You have to mark on your application where you worked before?

A. Yes; they want to know that.

Q. What do they want to know that for?

A. Well, they phone up there and want to know what record you have got over there.

Q. Do you know whether any of these men to whom you applied for work have telephoned to or otherwise communicated with the Fruehauf Company about you?

A. No.

Q. You do not know that of your own knowledge?

474 A. No, no.

Q. Well, why do you say that you made application and you had to put on the name of your former employer and they phone up? What made you say that, if you don't know that they do that?

A. Oh, I know it. I have got so many friends who tell me, you know, that when they start on a new job in a new factory or something like that, that they——

Q. Yes?

A. (Continuing.) They call up on the phone and say, "Did that man used to work with you? Has he got experience?" When they try to start in another trailer factory. They say, "You have got trailer experience? Where did you work before?" "Well", they say, "Fruehauf Trailer." Well, they used to phone up and call up and say, "Was the man with you?"

Mr. KLEIN. That is all hearsay testimony. I object on that ground, if the Board please.

Mr. CARMODY. Would there be somebody in your company who would know whether or not such requests have been made of Fruehauf about these men?

Mr. KLEIN. I don't know if they keep a record of it.

Mr. CARMODY. But there might be somebody who would be likely to receive such telephone calls, if they were made.

Mr. KLEIN. I do not doubt that.

Mr. CARMODY. Who in your company would know that?

Mr. VOSLER. I suppose that those calls would come

475 to the employment department.

Mr. KLEIN. Mr. Larson might know that.

Mr. CARMODY. I wonder if we might have him in here tomorrow for a few minutes? All right, that is all.

Q. (By Mr. KLEIN.) What companies did you apply for a job at?

A. Three or four.

Q. What were their names?

A. One was on Canfield.

Q. What were their names and what did you apply for?

A. I went to so many places I don't know. They were in the newspaper there.

Q. You read a want ad, is that it?
A. Yes. And I was at the Covered Wagon.
Q. The Covered Wagon Company?
A. That is at Jefferson.
Q. What is the name of the company that you went to get a job from, so I can find out about this?
A. The name of that company is the Covered Wagon.
Q. Covered Wagon?
A. Yes.
Q. And did you sign anything there?
A. No. I only asked the man over there, the officer, and he said——
Q. Did he write anything down; did he write your name down?
A. Oh, yes. I know the name from the boss. He
476 was Mr. Brinkman?
Q. Brinkman?
A. Yes.
Q. And did he put your name down?
A. Yes. He said "Let us have your address here on this card and when I have something for you to do I will let you know."
Q. Did he put "Fruehauf" down there on this card?
A. I don't know whether he did or not.
Q. Did he ask you about it?
A. He asked me if I had some experience and I had to answer him that I worked there.
Q. What other companies did you apply for a job at?
A. Well, with the Fisher Body.
Q. Did you leave your name there?
A. Yes.
Q. Which plant of the Fisher Body?
A. I don't know. At the main employment office.
Q. Where is that?
A. I don't know what street it is on.
Mr. CARMODY. Is it on Grand Concourse? I don't know. Is it out on Grand Concourse?
Mr. KLEIN. I don't know. They have a number of plants here.
The WITNESS. They have plants here and they have one in Flint.
477 Mr. CARMODY. Mr. Tolbert, where is the main office?
Mr. TOLBERT. In the General Motors Building, but that is not where they do the hiring.
Mr. CARMODY. Do you know where the employment office is?
Mr. TOLBERT. At the Fleetwood Body Factory out on——

Mr. CARMODY. Is that the only employment office they have at the present time?

Mr. TOLBERT. Of course they have a door factory and an accessories plant also.

Q. (By Mr. KLEIN.) Did they take your name down there?

A. Yes.

Q. You signed it yourself?

A. Yes.

Q. Did you put Fruehauf down there for a reference?

A. Yes.

Q. Where else did you apply?

A. At Flint.

Q. Is the Fisher Body out there?

A. I don't know whether it was the Fisher Body.

Q. You don't know?

A. No. I was several times by Briggs and Packard.

Q. Did you fill out an application at Murray's?

A. No.

Q. At Briggs?

A. No.

478 Q. You did fill one out at the Fisher Body?

A. Yes.

Q. And at the Covered Wagon?

A. At the Covered Wagon I filled out no application. He took my name.

Q. So the Fisher Body is the only place you filled an application?

A. Yes.

Q. And at no other place?

A. No.

Mr. KLEIN. That is all.

Mr. PATTERSON. That is all, Mr. Trusch.

(The witness was excused.)

Mr. PATTERSON. Mr. Weinmann.

WILLIAM WEINMANN, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) Please state your name.

A. William Weinmann.

Q. And where do you live, Mr. Weinmann?

A. 13245 Rochedale.

Q. When were you employed by the Fruehauf Trailer Company?

A. I think it was the 30th of May 1938.

Q. And what is your trade?

479 A. Carpenter and body builder.

Q. When were you discharged?

A. On the 15th of July 1935.

Q. At what time of day?

A. Oh, well, I went home at 12. I was told at 11:30 that I was through.

Q. And who discharged you?

A. Mr. Rosenbusch.

Q. And just tell the Board how the discharge came about?

A. Well, it was about 11:30 in the morning when Mr. Rosenbusch walked up to me. "Hey", he says, "What is your badge number?" I told him, and he had a list with a lot of names in his hand and he checked my name off of that list. "Well", he says, "You are one of them." He says, "I want to talk to you in my office." I says, "Right away?" He says, "Yes; come along." So I went along, and he stopped outside the door. He did not take me in. "Well", he says, "Bill, I see you are a union man." I says, "Yes." He says, "Will you consider dropping out of the union?" I says, "No; why should I?" "Well", he says, "We don't want any union men around here." He says, "Will you drop out?" I says, "No." I says, "Mr. Rosenbusch, I have been a union man for 10 or 12 years, and I can't change my mind in five minutes. I intend to keep on being a union man."

"Well", he says, "If you won't change your mind, we will pay you off at noon."

480 Q. Did he pay you off at noon?

A. No. He told me to come back the 20th of July and get my check.

Q. Did you go back the 20th of July?

A. Yes. I went to the employment office to Mr. Larson, and I asked him for my pay check. And I came in there, and he says, "What is the matter? Why aren't you working today?" I said, "I have been fired five days ago."

He says, "That is news to me."

Q. Did he pay you off on the 20th?

A. Yes; but I had to go to the body office to get my pay check.

Q. From whom?

A. Mr. Rosenbusch.

Q. Mr. Rosenbusch had your pay check?

A. Yes.

Q. Did Mr. Rosenbusch say anything to you at that time or just pay you off?

A. No. I walked in and told him, "I want my pay check." He said, "You will have to go up to the employ-

ment manager about it." I told him, "I was in there and he sent me here." And he looked in his desk and handed me the check, and I went home.

Q. During your employment there as carpenter, Mr. Weinmann, did your foreman ever make any complaint to you about the quality of your workmanship?

A. No, sir; not to me.

481 Q. Well, so far as you know did he ever complain about the quality of the work you did, to anybody?

A. Not that I know of.

Mr. PATTERSON. That is all.

Cross-examination:

Q. (By Mr. KLEIN.) Mr. Weinmann, when did you start working at the company, do you recall?

A. The 30th of May 1933.

Q. In 1933, was it?

A. Yes.

Q. In 1933?

A. Yes.

Q. And when did you join the union?

A. I don't know.

Q. I mean this particular union that was—that was at the Fruehauf Company?

A. I think it was in April or May 1934.

Q. There wasn't any union there before that, was there?

A. Well, I was sick for a couple of months and the union started while I was home, but after I went back to work I joined the union.

Q. Did you help organize the union?

A. It was organized already when I got there.

Q. Was Nick Trusch in the union at that time?

A. I suppose; I don't know.

482 Q. You don't know?

A. Well, I was home for two months. I was sick.

Q. I mean when you came back and when you joined the union, was Nick Trusch a member?

A. Yes; he was.

Q. He was a member?

A. Yes; he was, as I recall it.

Q. And wasn't it decided to get other members for the union?

A. Certainly. We always tried to get more members.

Q. What work did you do at the factory?

A. I was setting up body frames.

Q. Setting up body frames? What do you mean, putting up the lumber?

A. No. You see, on a chassis frame there is a body frame the whole width of the body where they build the sides on.

That was my job, to set them up so they could weld them together.

Q. They weld them together?

A. That was steel.

Q. Steel. What did you have to do, bend them?

A. No; they came down the same length, the width of the job. I had to put them on and put the side rails on. And I had to clamp them on with clamps.

Q. And then the welder would weld them on the chassis?

A. Yes.

Q. That was your job?

483 A. Yes; for a little more than a year.

Q. That was right at the factory at Harper Avenue?

A. Yes.

Q. And you were paid by the hour, were you not?

A. Yes.

Q. And when you started you got 42 cents an hour, did you not?

A. Yes.

Q. And then when the factory raised the pay you were raised three different times so that you got 55 cents an hour?

A. Yes.

Q. They raised it several different times when the wage scale went up in Detroit? And you got more pay, did you not?

A. Yes.

Q. Well, didn't Mr. Rosenbusch always talk to you when you wanted to discuss anything with him?

A. I never talked to him.

Q. You never had occasion to talk to him?

A. No.

Q. Did he ever talk to you about what he wanted done?

A. No. He would send the subforeman and he would come and tell me what he wanted done.

Q. Didn't the subforeman always talk to you if you wanted anything?

A. How do you mean?

Q. I mean if there was anything you wanted to find out.

484 A. Sometimes he would not know, and he would go and ask.

Q. He would always talk to you, though, if you wanted to know about your job, or anything else about the job?

A. Yes.

Q. You knew they had a lot of men in the factory who did not belong to the union?

A. I know they had.

Q. And you tried to get some of those men to join the union?

A. Yes.

Q. I am not criticising you. I am trying to find out what the facts are?

A. Yes.

Q. And didn't you talk to them sometimes while you were down at the factory? I mean while you were working there you would say, "John, why don't you join our union?"

A. Never while I was working.

Q. Never in your life?

A. Never.

Q. When did you talk to them?

A. Outside the shop and maybe in the morning when I started. You see I had a helper.

Q. A what?

A. A helper, a young fellow, and that is the only fellow I had talk with. I did not have to work with anybody else except him and he told me he was a personal
485 friend of Mr. Fruehauf's, so I knew there was no use to ask him to join the union.

Q. Didn't you talk to anyone else?

A. Not during working hours.

Q. Wasn't there anyone else working on that job there nearby you?

A. Yes; there was a welder. He was a relative of Mr. Rosenbusch.

Q. How about the other fellows? They were not all relatives in the factory, were they?

A. We discussed that question in union meetings, because we were told, and we did not know what stand the company would take about us talking union in the shop. So we decided in that meeting not to talk union during working hours so we would be in the clear. And I kept myself to that.

Q. Didn't an outside man organize your union there at Fruehauf's? He organized your union, didn't he?

A. I don't know.

Q. You just joined it when someone asked you to join it?

A. Yes.

Q. And isn't it a fact that Mr. Rosenbusch told you to stop talking about union while you were working, that it created a lot of arguments while you worked?

A. No, sir. I never talked to Mr. Rosenbusch two dozen words while I was there.

Q. And if Mr. Rosenbusch says you did, he is not
486 right about it?

A. No, sir.

Q. And isn't it a fact that after warning you not to talk union while you were working he called you in and said, "We are laying off some men and due to the fact that you insist on talking union all the time, we are letting you go"?

A. No; he never told me that. He said, "I fire you because you are a union man."

Q. You know they laid off a lot of men in June and July?

A. I know they laid off a lot of men before me, but I don't know who they were.

Q. You know a lot of men were dismissed or discharged?

A. But at the same time they hired some new men.

Q. You know they did not hire as many as they laid off?

A. I don't know that.

Q. Didn't you ever discuss that in the union?

A. That wasn't my business.

Q. Well, did you or did you not discuss it?

A. What?

Q. About laying off men and hiring back men.

A. Not that I recall.

Q. You don't recall ever discussing that at the union?

A. No. I did not attend every meeting. I don't know.

Q. Have you tried to get a job since?

A. Yes.

487 Q. Where did you apply?

A. Well, Packards and Briggs, and the Fisher Body, and some other small body shops here in Detroit.

Q. Did you fill out an application blank there, too?

A. Yes; I filled one out—well, just at the Fisher Body here in Detroit and one out in Flint. Then, out in Jefferson—some steel company or electric company—I don't know the name.

Q. You know the company had a lot of men who did not belong to the union working for them when you were let out?

A. Yes.

Q. And they had a lot of men belonging to the union working for them when you were let out?

A. Yes, sir.

Q. And they have got a lot of men belonging to your union working for them now?

A. I don't know about that.

Q. Well, they have them. Don't you go to the union meetings any more?

A. I wasn't there for I don't know how long.

Q. Why not?

A. Well, we had a meeting once in a while, but the only ones that come were the ones who were let out. They were laid off already.

Q. The others did not come?

A. No, sir.
488 Q. But you have a meeting——
A. Once in a while.
Q. When was the last meeting you had?
A. I don't know.
Mr. KLEIN. That is all.
Mr. EDWIN S. SMITH. Mr. Klein, what is the point of your line of questions about the wages these men received? What are you trying to bring out to the Board?
Mr. KLEIN. Well, I am just showing that when wages increased generally in Detroit these men were given wage increases by the company. They were not just held to this low 33-cent scale, but when the wages increased they got the benefit of it.
Mr. CARMODY. When were the dates of those wage increases in Detroit?
Mr. KLEIN. I can't give you the exact statistics, but I think these parallel them. I think your Board has them available.
Mr. CARMODY. I don't think we have those general wage increases, nor do I think we know what people were affected by them or what the rates were. If you have that——
Mr. KLEIN. It is in one of the newspapers—it was in one of the newspapers just this last week.
Mr. CARMODY. That is all.
Mr. KLEIN. I mean these wage increases may vary,
489 depending on the man also, sir.
Mr. CARMODY. Yes.
(The witness was excused.)
Mr. PATTERSON. Arthur Beck.

ARTHUR BECK, called as a witness on behalf of the National Labor Relations Board, having been first duly sworn, testified as follows:

Direct examination:
Q. (By Mr. PATTERSON.) What is your full name?
A. Arthur Beck.
Q. Where do you live, Mr. Beck?
A. 5656 Fairview, city of Detroit.
Q. Did you formerly work for the Fruehauf Trailer Company?
A. I did.
Q. When were you first hired by them?
A. In the year 1919 I think.
Q. And how long did you work?
A. I have a faint recollection of how long it was, but my entire period, except the last week, was on a shipping dock at the south corner of Harper Avenue. Then I went

for a week in the blacksmith shop to help them out when they were short, and they cut my wages 5 cents an hour for going to help them out.

Q. After starting in 1919 how long a period did you work for them all together?

A. Oh, I imagine 3 months.

490 Q. Then you were away from the Fruehauf Company for a while?

A. I was away from them until the 10th day of May last year.

Q. The 10th day of May 1934?

A. Yes, sir.

Q. And how long did you work on that occasion?

A. I worked around until the 8th of July, I believe.

Q. Of 1934?

A. Yes, sir.

Q. Then, when did you go back finally?

A. I am not sure of the exact date, but it was on a Tuesday morning before Thanksgiving, around the 23rd of November.

Q. November of 1934?

A. Yes, sir.

Q. And you were discharged when?

A. On the 6th day of July of this year.

Q. At what time of day?

A. Why, I was eating my lunch after the dinner whistle blew at 12 o'clock, when the timekeeper came and informed me that the boss wanted to see me immediately without giving me a chance to finish my lunch.

Q. Who was the boss?

A. Mr. Rosenbusch.

Q. And did you interrupt your lunch and go to see him?

A. I had to take my lunch along in my hands unwrapped and go in there and see him.

491 Q. What did he say to you?

A. He laid out my yellow lay-off slip or discharge slip and said, "You are all through. Get your tools up here and get your time slip on your way out."

Q. The time slip you got said something about reducing forces?

A. Yes, sir.

Q. Did he say anything to you about reducing forces?

A. He got up and walked out of the office and did not say anything more.

Q. If I understand this correctly when you got in the office he handed you a time slip and said, "You are all through?"

A. "You are all through."

Q. And "Get your tools and get out of here?"

A. "Get your tools and bring them up for inspection. You will get your check from the employment office on your way out."

Q. And he walked away?

A. And he walked away.

Q. Did you have your tools inspected?

A. I did, after waiting about 20 minutes, when Joe Weber, a subforeman, came up to inspect them, and he left the office entirely.

Q. Weber, a subforeman under Rosenbusch?

A. Yes.

Q. What conversation did you have with Weber?

A. Well, I said—he said "What is the matter with
492 you?" "Oh", I says, "I am all through." He says, "What? Are you quitting?' I said, "Yes, for a good reason, when they ask you to." And he says, "What did you do then?" I said, "Well, I got a ticket." He said, "What for? Speeding?" I said, "Yes; I guess so. I have been working too fast, or I joined the union too fast, or something. I don't know what I did do."

Q. Well, after you talked to Weber what did you do next?

A. I took my tool box on my back and I carried it down past the employment office and Mr. Larson rapped on the window for me, the employment manager and asked me to come back, and I said "Just as soon as I can get this in my car off my shoulder." And I came back and he opened a little private door off the main entrance on Harper Avenue and let me in there and he said, "Beck, what is the trouble?" I said, "I got fired." He said, "What for?" I said, "Too much union." He said "I am sorry to hear that. You have got a mighty fine record with us."

Q. Now, Mr. Beck, did the company know that you were interested in this union and that you solicited memberships?

A. Yes.

Q. How did they know that?

A. On pay day, the third day of July, they paid ahead of time, that time. Pay day was not supposed to be until the 5th and they paid off on the 3d, and while I was standing in the line there to get my pay check Mr. Rosenbusch was coming out of the office. I was with one of the boys
493 I had solicited that morning for his application for membership in the organization and he handed me his application blank and a dollar bill and Mr. Rosenbusch observed the transaction when he handed it to me. I have got the slip I got from him from my files at home.

Q. You mean that Mr. Rosenbusch saw the applicant whose name appears on this card——

Board Exhibit 15

American Federation of Labor
The United Automobile Workers of America
APPLICATION FOR MEMBERSHIP No. 3446

Board Exhibit 15

SERIES B

American Federation of Labor
APPLICATION FOR MEMBERSHIP No. 8448
The United Automobile Workers of America
District office—401 Fisherman Building, 3011 Woodward Avenue, Detroit

Name Albert Feregabian Card 5-15
Address 18493 Justine Ct
Where Employed Ternstedt Co. of Work Body Wld
Home Address 18940 Harlow
Birth No. Brass Amount Paid 100
Application Taken Paul Date 9/7/37
Card Issued by Arthur Rock

Q. How did they know that?

A. On pay day, the third day of July, they paid ahead of time, that time. Pay day was not supposed to be until the 5th and they paid off on the 3d, and while I was standing in the line there to get my pay check Mr. Rosenbush was [illegible] out of the union. I was with one of the boys

493 I had selected that morning for his application for membership in the organization and he handed me his application blank and a dollar bill and Mr. Rosenbush observed the transaction when he handed it to me. I have got the slip I got from him from my Chevrolet home.

Q. You mean that Mr. Rosenbush saw the applicant whose name appears on this card——

A. Present me the card and the dollar bill.

Q. Mr. Rosenbusch saw that transaction? Was that during working hours?

A. That was during the lunch hour, about 1 or 2 minutes before they started paying off.

Q. And that was about 3 days before you were discharged?

A. Yes, sir.

Q. And you did not work on the 4th of July?

A. No, sir.

Mr. PATTERSON. Mark this complainant's exhibit no. 15.

(The document referred to was marked "Complainant's Exhibit No. 15", for identification.)

Mr. PATTERSON. At the time this card was handed to you by the applicant, you say there was a dollar bill with it?

The WITNESS. Yes, sir.

Mr. CARMODY. That is not being marked as an exhibit, I notice, the dollar bill?

Mr. PATTERSON. No, sir; I offer that in evidence.

494 (The document previously marked for identification "Complainant's Exhibit No. 15", was received in evidence, Witness Beck.)

Mr. PATTERSON. And you may take the witness—oh, just one other question.

Q. (By Mr. PATTERSON.) What is the fact, Mr. Beck, as to whether or not there were more or less employees working in the department in which you worked, a week later?

A. Well, I have got information from quite a few of the employees that worked in the factory——

Mr. KLEIN. I object to this, again. It is all hearsay, if the Board please.

Chairman MADDEN. Well——

Mr. KLEIN. What someone else told him.

Mr. CARMODY. I understood that the company was going to bring in its employment records showing not only the number of men working but the man hours of those various days in July. Won't that cover the thing, Mr. Patterson? Will that satisfy you?

Mr. PATTERSON. Yes, it will.

Mr. CARMODY. Yes.

Mr. KLEIN. We will undertake to do that.

Chairman MADDEN. Will that be by dates?

Mr. KLEIN. I will see how they keep the things. We did not have much chance at noon time.

Chairman MADDEN. Let this man give us his hear-

495 say for what it is worth. It won't do any harm.

Mr. KLEIN. Note my exception.

A. There were several of our members in the factory that I conversed with after my discharge and they told me they

put on in the next 7 days eleven men, eleven new men, in this body department.

Q. (By Mr. CARMODY.) In which you had been working?

A. Yes, sir.

Q. In the next seven days?

A. In the seven days following my dismissal.

Q. In the department from which you were dismissed?

A. Yes, sir.

Q. 11 new men had been——

A. Entered in the service—entered in service in there.

Q. (By Mr. PATTERSON.) Mr. Beck, did the union have a meeting shortly prior to the 6th?

A. The day before the 6th we had a meeting in the Triple Link Hall, and I was quite enthusiastic at that meeting that night and agitating the boys to get together and to call a special meeting for a strike on account of the discharge of the officers of our union who had all been discharged at that time with the exception of Mr. Martin and one other.

Mr. CARMODY. What Martin is that?

Q. (By Mr. PATTERSON.) What office did Mr. Martin hold?

A. Well, I couldn't tell you exactly what office he
496 had. I believe he was treasurer or something like that at that time.

Mr. PATTERSON. That is the connecting link here that you heard so much about. That was the same Martin employed by the detective agency.

Q. (By Mr. CARMODY.) He was a member of your union?

A. Yes; and an officer.

Q. An officer of your union?

A. Yes.

Q. (By Mr. EDWIN S. SMITH.) Who were the other men that were fired who were officers?

A. Steve Sprytzer, president; Arthur Hillman, vice president; Frank Shute, shop steward; and Morris Sanctotum, who was a shop steward.

Q. Were those all of the officers of the union?

A. And Gerald Connelson—I am not sure whether he was discharged or whether they took him from the plant and transferred him to another branch of the service, or what was done to him. I could not tell you about that, but he left the service of the company before I was discharged.

Q. Then there were no other officers of the union left at that time?

A. I was the only one in there except Mr. Martin at that time, and I was appointed assistant shop steward, and when Morris Sanctotum was discharged, I automatically stepped into the body shop steward's position.

497 Q. And there was nobody there but Martin?
A. No.

Mr. PATTERSON. He then resigned, as the evidence will show. His job was done. That is all.

Mr. CARMODY. I would like to ask this:

Q. (By Mr. CARMODY.) Did you know at that time that Martin was an under-cover detective doing espionage work for the vice president of the company?

A. We did not.

Q. To report on the union activities of the men?

A. We did not.

Q. You knew nothing of that?

A. We knew nothing of it whatsoever. We knew there was a leak in our organization some place, but by whom it was——

Q. Did that make you suspicious?

A. It did make us suspicious but we had so many to suspect, we did not want to let our thoughts out until we could lay it on the proper individual.

Q. (By Mr. EDWIN S. SMITH.) How did you know there was a leak?

A. Our officers were getting discharged and they were trying to reduce our membership that we had, so there was no other conclusion to reach but that, and I spoke quite strongly at the meeting Friday night of a strike and I told the boys there, "Tomorrow morning at 8 o'clock I will
498 be upon the street with the rest of them that are gone", but I lied to them. I did not get fired until 12 o'clock noon.

Q. (By Mr. CARMODY.) Did you talk about the leak?

A. Not during our regular course of business. We discussed it before and after the meetings.

Q. Was Mr. Martin present at any of these conferences when you yourselves spoke about there being a leak?

A. I believe he was at one or two of them.

Q. When you were talking about a leak he was present?

A. Yes.

Q. (By Mr. EDWIN S. SMITH.) How did Martin get the job as officer?

A. I could not tell you. He joined the union before I went to work for the company the last time.

Q. (By Chairman MADDEN.) How did Martin talk that time when you agitated a strike?

A. Martin opposed it.

Q. What did he say?

A. He thought it was the wrong time, that business was slack and he did not think it was a good time to negotiate a strike on account of conditions, that they were working

practically all of them, on stock jobs and they were just keeping the men on through sympathy for them, and that he thought we ought to take a lay-off until things picked up.

Mr. KLEIN. Are you through, Mr. Chairman?

499 Chairman MADDEN. Yes.

Cross examination:

Q. (By Mr. KLEIN.) What do you mean by "assistant shop steward"? What is meant by that?

A. Well, the body shop covers a large number of employees and we had one main shop steward and there were two.

Q. What do you mean; is that a shop steward for the company or the union?

A. For the union.

Q. So the union had stewards in all the departments—at least they tried to get a man in all the departments?

A. We tried to cover all the departments.

Q. And what was the purpose of trying to cover the departments with a steward?

A. The steward was the only one who had the power of the organization to solicit members and collect $1 initiation fee or whatever the initiation fee was.

Q. So you had him in the department to solicit members; is that correct?

A. Yes, sir. He had full instructions at every meeting and I attended up to the last meeting before I was dismissed from the service—that there was to be no business transacted in regard to unionism during working hours, that we should do that before or after work and during our noon hour.

Q. Of course you never did it during working hours?

500 A. I did not; no, sir.

Q. Wasn't it the day of July 5th instead of July 6th that you were let out?

A. No, sir. It was July 6th, on Saturday; July 5th was Friday and the 4th was Thursday.

Q. The records that I have show July 5th and I just wanted to make sure that I was right——

A. Mr. Patterson has my lay-off slip there. He made it the 5th there and then he covered it over with his pencil on the carbon copy and made it the 6th. It was Saturday the 6th.

Q. (By Mr. CARMODY.) You were paid up to what hour?

A. 12 o'clock noon.

Q. Saturday?

A. Yes, sir.

Q. (By Mr. PATTERSON.) What work did you do there?

A. Body builder, and during the last couple of months of my service, instructor to new men.

Q. And you had been working there about a year the last time?

A. No; I had only worked there about 8 months, seven or eight months, the last time.

Q. (By Mr. CARMODY.) November to July?

A. Yes.

Q. And you were only paid 50 cents an hour while you were working?

A. Yes.

501 Q. Did you have any accidents while you were working there?

A. Yes, sir.

Q. (By Mr. KLEIN.) You had quite a few accidents?

A. I was the unlucky dog; yes.

Q. You had an accident on—you had an accident in June 1934, didn't you?

A. Yes, sir.

Q. (By Mr. CARMODY.) What was the nature of that accident?

A. The nature of it was—the mechanics in my department had a special type of tool—they have a special type of countersinking tools, and I had to countersink holes on the inside of trailers, and I had to use a large auger bit to countersink a hole an inch and a quarter wide. The hole was originally drilled through with a quarter inch drill and I had to countersink an inch and a quarter hole over that.

I had just worked there a month at that time, and the mechanic that was there, helping there, the body builder, he gave me this bit which was set in a big heavy motor and told me to countersink the holes.

Q. How high up did you have to hold the motor?

A. Up above the top of my head for the top holes and for the bottom holes at the level of my knees.

Q. To countersink a hole you had to hold the motor up above your head?

A. Yes.

502 Q. What does this countersinking tool cost, a small countersinking tool?

A. This was a wood auger bit that I had, and it wasn't my bit. It was a bit that belonged to the mechanic I was helping.

Q. (By Mr. EDWIN S. SMITH.) What happened as a result of the accident?

A. Well, I was reaching up there for the top hole to countersink the top hole. I got the bottom hole all right and the thread on this auger bit was larger than the quarter inch hole drilled through, and the thread caught in the wood and in order to keep the bit from going through and

damaging the sheet metal on the other side I jerked it away. The motor flew loose and the thread on the bit cut my hand and I had an internal infection on the knuckle of my right hand.

Q. Were you out for some time?

A. I guess I was out 15 or 16 days, something like that.

Q. (By Mr. PATTERSON.) And there was compensation insurance paid you by the insurance company?

A. Yes, sir; by the Michigan Mutual Benefit Company.

Q. (By Mr. KLEIN.) Then on December 1st, 1934, you had another accident?

A. I don't recall what that accident was on December 1st.

Mr. CARMODY. What was it from the record?

The WITNESS. I don't know.

Mr. KLEIN. I do not have the record at this time.

503 Q. Do you recall having an accident around that time?

A. On December 26th, the morning after Christmas, half an hour after we started work at 7:30 in the morning.

Q. You had an accident, did you?

A. Yes, sir; that was my fourth, due to carelessness of employees, and the careless safety practice of the management.

Q. (By Mr. CARMODY.) What was that?

A. I was laying a floor in a trailer body, and they had two men working on a scaffold near by, on the roof, putting fillers along the side, and they had an electric motor there, a small high speed electric motor, with a quarter inch drill in, which was ground to a needle point; and the workmen there, due to carelessness, laid the motor over the ribs of the top, and let it hang down inside of the trailer while the motor was going; that is, he had shut it off, but it was still revolving, like a high speed motor will, for some time before it will quit. And I walked up slowly toward the front of the trailer to see if my flooring was up tight against the front, when this drill struck me in the jaw and went through the jawbone, and down into my gland, and it was not five minutes before my face was swollen up twice its normal size on one side; and I could not talk.

Q. (By Mr. CARMODY.) And that is one of the accidents for which you were discharged, is it?

A. Yes, sir. There was no investigation made by the management at all in regard to the accident.

504 Q. (By Mr. KLEIN.) You were paid compensation insurance, were you not?

A. After I lost my first week—which was proper.

Q. Someone checked up, did they not, to see whether you had——

A. Oh, naturally they would; the Michigan Mutual Hospital would check up on accident coming in from Fruehauf.

Q. So that they checked up to see whether there was any basis for the claim that was filed?

A. Yes.

Q. (By Mr. CARMODY.) Is there a safety engineer in this plant?

A. No, sir.

Q. There is no safety engineer in the plant, a plant with perhaps 700 men working there?

A. At the time this accident happened I spoke to Mr. Larson about it, and I told him—I said, "The best thing they could do here, for humanity sake, would be to install a good safety engineer here." I worked for the Michigan Bell Telephone Co. 18 years, and during 6 of those years I was safety engineer for them, and I never had a loss, or an accident, to myself or my employees.

Q. (By Mr. KLEIN.) What did they let you go for?

A. They let me out because I was not an efficient workman in the line of work they had open, because they discontinued the branch of the service that I had at that time.

505 Q. In February 1935, on February the 1st, 1935, you had an accident, did you not?

A. I do not recall whether it was February the 1st or not?

Q. You will not say that you did not have an accident, will you?

A. No; I did have an accident around that time; yes, sir.

Q. What was that?

A. I was nailing the fillers in the bottom of a trailer, around the bottom, right between the floor and the outside, and some workmen were working on a scaffold putting fillers in above; and while I was down below nailing my fillers in I had my hammer in my hand and my thumb on my hammer handle and one of those workmen at the top had his fillers laying across the ribs, and one of them dropped down and struck me across the back of the thumb, and I lost the finger nail.

Q. Were you paid compensation for that?

A. No, sir.

Q. You were not?

A. I lost one day's work for that.

Q. (By Mr. EDWIN S. SMITH.) Did you lose time on December 1st, when you—when they say you had two other accidents?

A. No, sir. The only two accidents I had there were those I mentioned, that I lost time on.

Q. (By Mr. KLEIN.) On February the 4th, 1935, you had an accident, did you not?

506 A. I do not recall the date.

Q. You will not say that you did not have an accident on that date, will you?

A. I do not recall the date.

Q. You do not know whether you got compensation, then, or not, do you?

A. I did not get compensation. I only got compensation in two cases; that was the case in my first employment there, last May and June; and the 26th—the December 26th accident.

Q. You will not say that you did not have an accident of some kind, then?

A. I may have run a splinter in my finger; yes. They charge up everything as an accident against the employees, splinters and everything else.

Q. Other employees were working in the factory?

A. I imagine so.

Q. But when you had an accident, it was due to the other fellow?

A. Yes.

Q. Now, then——

Chairman MADDEN. Just a moment. What do your records show about the dropping of the hammer?

Mr. KLEIN. All I have is this——

Mr. EDWIN S. SMITH. Maybe the man is telling the truth. Maybe somebody did drop a hammer, or whatever it was, on him.

507 Mr. KLEIN. I am just asking about the facts, that is all I am trying to get at.

Chairman MADDEN. Let it go for the moment.

Mr. KLEIN. I am merely inquiring about what I have here. I only have the accident reports, showing the accidents on those dates, and I am inquiring about them.

Mr. CARMODY. There would be a report however, that went to the compensation commission, would there not?

Mr. KLEIN. That is why I am inquiring about it.

Mr. CARMODY. Will not that record be available here?

Mr. KLEIN. We will see if we can get it. We carry our own compensation insurance now.

Mr. CARMODY. Well, irrespective of that, there would be a permanent public record, would there not?

Mr. KLEIN. I imagine the insurance company ought to have it.

Mr. CARMODY. Bring the records in, and that will save a lot of time. I think you can get all this from the accident reports.

Mr. KLEIN. I think the witness can explain why he was discharged.

Q. (By Mr. EDWIN S. SMITH.) Just a moment. What happens if you get a splinter?

A. You have got to go into the time office there, and the timekeeper, or one of a couple of clerks in there take
508 it out and mark your clock number down on a chart there, as having an accident, or being in for first-aid treatment.

Q. Do they have a first-aid room in the factory?

A. They have down next to the employment office.

Q. Who presides over that?

A. The doctor comes in there once in a while to take care of the patients.

Q. Is there a nurse in attendance there?

A. How?

Q. Is there a nurse in attendance there?

A. No.

Q. There is nobody there except when the doctor comes in, on his daily visit?

A. Why there is someone there—I guess Mr. Larson presides over it during the time the doctor is not there.

Q. (By Mr. KLEIN.) The company never refused—or the foreman never refused to talk to you about your work at any time, did he?

A. I never had a talk with the foreman, in regard to efficiency.

Q. You never had?

A. (Continuing.) Or inefficiency, of my work.

Q. You never had?

A. No, sir.

Q. And did he not ever tell you that you were too
509 careless in your work and had too many accidents?

A. I never talked to the foreman about it.

Q. And he never reprimanded you for that?

A. Never.

Q. (By Mr. CARMODY.) Who was the foreman?

A. Rosenbusch. I have never talked a word to Rosenbusch in the shop, except the time I was discharged, and the first time I was hired, and the last time I was hired—that is the second time I was hired, rather, last May, a year ago, and last November.

Q. (By Mr. KLEIN.) When you talked about this strike, that you have mentioned, did you go to the company, or did anybody from the union go to the company and discuss that situation with them?

A. I did not.

Q. Did you meet with the company; did you send some one to discuss it with the company?

A. The meeting voted to appoint a committee.

Q. Did the committee discuss it with the company?

A. I could not tell you. I left that Saturday evening and went down south and did not get back until Tuesday night.

Q. And you never found out about that; you were not interested, to that extent?

A. Yes.

Mr. PATTERSON. That is objected to.

510 Q. (By Mr. KLEIN.) Were you not interested in knowing whether or not that matter had been discussed with the company?

A. I was interested in the outcome of the vote, but I do not know whether the committee got to see the management or not, although I understand through hearsay, which you do not want——

Q. That is right. I do not want it.

A. Well, then I will not repeat it.

Q. All right, sir. Before a strike vote, though, were you not interested in talking to your employer, to see whether or not you could correct the situation about which you were unhappy?

A. The employer did not seem to feel that way about it, discharging employees the way he did.

Q. And whether they went to talk to the employer or not, you were not interested in?

A. I have told you——

Q. All you were interested in was to see how they voted on the strike, was it not?

Mr. PATTERSON. Why not let him answer.

Mr. KLEIN. I am asking the question, and I want a yes or no answer.

Q. Will you answer the question please, Mr. Beck? You just said you were interested in seeing how they voted on the strike—did you not?

A. That was my greatest interest.

Q. Yes.

511 A. On my return from Virginia.

Q. Yes.

A. Yes, sir.

Q. What may have happened in connection with the committee if they did talk to the management, did not matter; you wanted to know how they voted on the strike?

A. Well, the committee probably tried to make contact with the employer and the employer would not contact them.

Q. Well, you just said you do not know anything about that?

A. I do not know.

Q. All right.
A. I said, they might have, and I assume they did.
Q. They might have?
A. Yes.
Q. But you did not inquire?
A. No.
Q. You were just interested in the strike?
A. Our committee was to take care of that.
Mr. KLEIN. All right. I have no more questions.
Q. (By Mr. EDWIN S. SMITH.) Mr. Beck, you say that you were discharged at the noon hour?
A. Yes, sir.
Q. In the time that you spent out at the factory, are you familiar with cases other than those who have testified, previous to this, where an employee was discharged
512 at some time during the day rather than at the end of the day? Does that happen very often; is that a customary thing in the factory?
A. Well, I could not tell you whether it is a customary thing or not. I have not been so very familiar with the discharges there. When you are working in the plant there, you have not got time to see everything that is going on. But there have been various ones of our employees who have been let out—various ones of the employees there who have been let out at all periods of the day.
Q. That does go on, then?
A. Yes, sir.
Mr. EDWIN S. SMITH. That is all.
Chairman MADDEN. Are you through with the witness?
Mr. KLEIN. Yes.
Mr. PATTERSON. That is all.
Chairman MADDEN. You are excused.
(The witness was excused.)
Mr. PATTERSON. Richard McClure.
RICHARD McCLURE, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name please?
A. Richard McClure.
Q. Where do you live?
513 A. 10937 East Vernier, Detroit, Michigan.
Q. By whom are you now employed?
A. Fruehauf Trailer Company.
Q. How long have you worked there?
A. Since two years ago last June—altogether that is.
Q. Were you a member of the union?
A. Yes, sir.

Q. Do you recall of your foreman, Mr. Goodell, having talked to you some time in July regarding union activities?

A. Yes, sir. Shortly after those men were laid off he approached me one afternoon just before quitting time, and he had a list in his hand of numbers; and he asked me what my number was, and I told him.

Q. (By Mr. CARMODY.) What do you mean when you refer to numbers; what numbers?

A. Badge numbers.

Q. Badge numbers?

A. Yes, sir; badge numbers.

Q. Yes?

A. And I told him, 322.

Q. (By Mr. PATTERSON.) What else, if anything, did he say to you at that time?

A. He said, "I guess you know what this is all about." I said, "I have got a good idea." He said, "Well, you will have to give it up, or I will have to fire you."

514 Q. Did he say anything else to you at that time?

A. No, sir; not to me.

Q. And can you tell this Board what he referred to, when he said "You will have to give it up or I will have to fire you"?

A. My union activities.

Q. Yes.

A. That was my understanding—or guess.

Q. (By Mr. KLEIN.) That is your guess?

A. Well, that is the only thing it could have been.

Mr. PATTERSON. We shall be very glad to have Mr. Goodell tell us what he did mean, if he did not mean that.

Q. What did Mr. Goodell then do, after he had made this comment to you?

A. Why, he approached another member of my gang and had much the same conversation with him.

Q. At about the same time?

A. Yes, sir; just a few minutes after he had talked with me.

Q. (By Mr. EDWIN S. SMITH.) In your presence?

A. Well, no; that is, within ten feet of me; but later on we got together, this other man and myself, and compared notes, and when we did, I found out that it was the same.

Q. (By Mr. CARMODY.) What was that gang; what sort of work was that gang doing?

A. A riveting gang.

Q. Consisting of how many men?

515 A. Four.

Q. Yes?

A. Four men.

Q. (By Mr. Patterson.) At a subsequent date about two months ago did you have occasion to talk to Mr. Goodell again regarding the union?

A. Yes.

Q. What was the occasion for that conversation?

A. Well, it is a long story. I had been contemplating going into housekeeping, and before I did that, I wanted to be reasonably sure of my job; so I approached Mr. Goodell one noon hour, and I asked him if the management was still holding anything against me on account of my union activities; and he said yes, that they had decided to lay me off.

Q. And did he subsequently say anything about having had the matter adjusted, or being unable to adjust it?

A. Well, he told me at that time that he would see whether he could straighten it out, and he would let me know later on. I asked him then if I could talk to Mr. Halpin, and he said he would see what he could do.

Q. Now, how many men approximately, Mr. McClure, are working in your department?

Mr. KLEIN. When?

Mr. PATTERSON. Now.

A. I do not know. I haven't any idea. That is, I
516 would imagine around 75.

Q. (By Mr. PATTERSON.) Can you tell the Board whether the number of men working there now is greater or less than the number that was working in your department in July?

A. There are more men working there at the present time, Mr. Patterson.

Q. How many more?

A. Oh, at least 10 more men, I would say.

Q. (By Mr. EDWIN S. SMITH.) How many altogether are there in the department?

A. Well, as I said, around 75.

Q. Around 75?

A. Yes, sir. That is just an estimate. I have no way of knowing for sure.

Mr. PATTERSON. That is all.

Q. (By Mr. EDWIN S. SMITH.) Did you the second time you talked to Mr. Goodell give him any information about your present status respecting the union, as to whether you were in it or out of it?

A. No, sir.

Q. And he did not ask you about that?

A. No, sir.

Q. Are you still in the union?

A. Well, I have not been paying my dues, because there have been no meetings, and the members up at the

517 shop have just let things slide, because of the company's attitude.

Q. When was the last meeting?

A. The last meeting that I attended was the night we took the strike vote, and that was some time around the middle of July, I think, or—yes; around the middle of July.

Q. (By Chairman MADDEN.) When did the men at the plant learn about this fellow Martin?

A. Well, I just learned definitely the first part of last week, when he was discharged.

Q. Was there talk about it at the plant?

A. There were rumors; yes, sir.

Q. I know, but after it became more than a rumor—or has it ever been brought out in the open so that the men know what was happening to them?

A. Well, there was nothing definite. Just as I say, there were rumors about him having been in the employ of some detective agency, and having been in the plant for the purpose of breaking up the union.

Q. What did the men say about that?

A. Well, I could not very well repeat it, in this room—some of the statements.

Q. Would you say that that would make for harmony?

A. Harmony?

Q. Yes.

A. Do you mean—well; no, sir. I think that until
518 we found out who this man really was, we suspected one another to such an extent that it would do more to disrupt things than it would to make harmony.

Chairman MADDEN. Proceed.

Cross examination:

Q. (By Mr. KLEIN.) What sort of work do you do for the company, Mr. McClure?

A. I am a rivet heater.

Q. Rivet heater?

A. Yes, sir.

Q. In the assembly line?

A. No.

Q. What department?

A. In the frame shop.

Q. That is where they put the cross rails—they put the cross rails in, and they put the members in there, after you get them in?

A. The side rails and frame are all bolted together, and the hangers, with all of the castings and everything bolted on, when the job comes to us; and we drive the rivets, take the bolts out, and finish it up.

Q. You drive the rivets—and you work with a crew, in doing that work?

A. Yes, sir.

Q. Of how many?

A. Four men.

519 Q. And the material that you work on—the material is right there in the factory for you to work on?

A. It comes right to us; yes, sir.

Q. And you quit your job when you have finished doing it, with that riveting crew, the fellows you work with, when they quit?

A. I do not get that.

Q. You work with a crew of four men?

A. Yes.

Q. And your work stops with them, does it not?

A. Yes, sir.

Q. That is when you have finished working on a frame?

A. Yes, sir.

Q. You have worked there two years?

A. Yes, sir.

Q. Has your pay been increased?

A. Yes. I worked there—I have been laid off during that period. The last time—I was hired a year ago last month.

Q. Yes.

A. And I worked straight through during that time.

Q. Well, has not your pay been increased during that time?

A. Once.

Q. Once?

A. Yes, sir.

Q. Did they just give you that increase without your asking for it, or did you ask for it?

520 A. I had to ask.

Q. You asked for it?

A. Yes, sir.

Q. And you got it?

A. Yes, sir; after a period.

Q. After a period?

A. Yes, sir.

Q. Well, did you ever get any raise the first time you worked there?

A. Yes, sir. When I hired in there the first time it was in June 1933, and I hired in at 38 cents per hour.

Q. Yes?

A. And, of course, that was not the heating job, that was fitting—that is what I hired in at; and shortly after I hired in, why, the N. R. A. went into effect, and they had to

raise the pay to 44 cents per hour, which was the minimum under the N. R. A.

Q. Is that a fact?

A. Well——

Q. Do you know whether or not that is true, whether that was the minimum or not?

A. Under the N. R. A. it was—that was my understanding.

Q. Do you not know that this company paid much above the minimum in all departments at that time?

A. I am not talking about how much above they
521 paid. I am talking about the minimum.

Q. Do you mean that your pay was less than the minimum?

A. Well——

Q. In other words, their lowest standard was above the minimum, was it not? The least that the Fruehauf Trailer Company paid at that time was above that which the N. R. A. minimum called for, was it not?

Chairman MADDEN. You said in your original question "much above."

Mr. KLEIN. All right, then, strike out the word "much."

A. I was under the impression that the minimum under the N. R. A. was 44 cents per hour, and that is what I was getting, although I may be wrong.

Q. You are not sure about that, however, are you?

A. No. That was my impression.

Q. (By Mr. EDWIN S. SMITH.) Was any copy of the code posted on the bulletin board in the factory?

A. It seems to me that there was; yes, sir.

Q. (By Mr. KLEIN.) And you could read that if you wanted to, could you not?

A. Yes, sir.

Q. You were a member of the union from its beginning, were you not, Mr. McClure?

A. Yes.

Q. How was this union organized?

522 A. Well, the first that I heard of it one of the members told me that they were going to have a meeting that night at Southeastern High School, and that they would like to have me be present.

Q. And you went to that meeting?

A. I went to that meeting; yes, sir.

Q. And was Mr. McDonald, of the American Federation of Labor, at that meeting?

Mr. PATTERSON. That is objected to. I really do not see the materiality or the relevancy of this.

Chairman MADDEN. Oh, that objection is overruled.

Q. (By Mr. KLEIN.) What is your answer?
A. Yes, sir; he was.
Q. Well, now, Mr. McDonald did not work at the Fruehauf Trailer Company, did he?
A. No, sir.
Q. He was in the field here, for the American Federation of Labor, at Detroit, was he not?
A. Yes, sir.
Q. And did he discuss his affiliations with the members at the meeting?
A. He explained his position as an organizer—yes, sir.
Q. He told you that he was trying to organize a union at the Fruehauf factory, did he not?
A. Well——
523 Q. Or words to that effect?
A. Yes, sir.
Q. And that he thought that certain things could be accomplished, if you did form a union—or words to that effect?
A. Yes.
Q. I am not trying to quote his exact words.
A. I guess something along that line; yes, sir.
Q. About how many men were there at the meeting, do you recall?
A. Yes.
Q. Just roughly.
A. Around 35 or 40.
Q. About 35 or 40?
A. Yes, sir.
Q. And was there not, discussion at the meeting about trying to get new members?
A. Yes, sir.
Q. In other words, the plan was that the more members you had the stronger you thought your union would be?
A. Yes, sir.
Q. That is correct, is it not?
A. Yes, sir.
Q. And Mr. McDonald urged you to all get busy and get to work and get all of the various employees at the factory in the union, did he not?
524 A. Yes, sir; but he also stated that we should not do that during working hours.
Q. Oh, of course. Some of these men you never saw outside of working hours, though, did you?
A. Well, by that he meant that we were free to do it during our lunch hour, or before we started work in the morning.

Q. You know, Mr. McClure, that if a man is enthusiastic about a union or a club or something else, he just cannot wait to get some new members, where they will build up his club or his union; is that not so?

A. Sure.

Q. And sometimes a man becomes over-anxious to get a new member, and he will say, "While I am working right here with this man, I will talk to him, right now; while we are working here, working together, I will just talk with him about the union." Is that not true?

A. I suppose it is.

Q. And did you not ever hear any union members discussing joining the union with nonunion members?

A. Well——

Mr. PATTERSON. Fix the time.

Mr. KLEIN. Well——

Mr. PATTERSON. Do you mean during working hours?

Mr. KLEIN. I am asking him if he ever heard that.

A. Oh, yes; I have heard it.

525 Q. (By Mr. KLEIN.) And you heard them talk during working time also, did you not, sometimes, when they were enthused about getting new members in—it was a natural thing to do, probably, of course, in their enthusiasm about it?

A. There was talk among the members, but I do not believe that I ever heard a member approach or solicit a nonmember during working hours.

Q. But there was talk among the members during working hours, was there?

A. Yes, sir.

Q. You heard that at different times, did you?

A. Well, I engaged in it myself.

Q. You yourself?

A. Yes.

Q. Yes.

A. But I never heard anyone solicit a nonmember.

Q. During working hours?

A. No, sir.

Q. But you know——

A. (Continuing.) I know I never did it myself.

Q. I see.

A. And I do not recall having heard anyone else do it.

Q. Did your foreman always talk to you when you wanted to talk to him about anything out there?

A. Yes, sir.

526 Q. Goodell is your foreman?

A. Yes, sir.

Q. And the subforeman also?

A. Yes.
Q. How many men did you say you worked with; five?
A. Four.
Q. Four men?
A. Yes, sir.
Q. And were they all union men in your crew?
A. Up until recently; yes, sir.
Q. All union men?
A. Yes, sir.
Mr. PATTERSON. The witness is shaking his head. I do not know whether the reporter is getting it.
Mr. KLEIN. He shook his head, and he also said, "Yes."
Mr. PATTERSON. He nodded his head "Yes."
The WITNESS. Yes.
Q. (By Mr. KLEIN.) You are still working at the Fruehauf Trailer Company factory, are you not, Mr. McClure?
A. Yes, sir.
Q. They know that you are a union man, do they not?
A. Yes, sir.
Q. At least Goodell, you said, spoke to you about being in the union?
A. Yes, sir.
527 Q. You are not having any trouble about continuing to work there, are you?
A. How is that?
Q. You have still got your job there?
A. Except——
Q. (Continuing.) And you are getting paid, are you not?
A. Except for one occasion, the one which I related in answer to Mr. Patterson's question, which gave me a few hot moments, you might say.
Q. There are other fellows who belong to the union, who are still working there, are there not, Mr. McClure?
A. Yes, sir.
Q. Quite a number, are there not?
A. Yes.
Q. Although you do not go to the meetings now.
A. No, sir.
Q. There were a lot of fellows who did not belong to the union, who were let out in July and June, were there not?
Mr. PATTERSON. If you know.
Mr. KLEIN. If he knows. He knows who belongs to the union.
Mr. PATTERSON. He would not know every one.
Mr. KLEIN. Oh, I think he would.
A. I cannot speak for any other department, but for my own department, most of the fellows were union men.
528 Q. (By Mr. KLEIN.) Who were let out?
A. Yes, sir.

Q. But there are still some union men left there, are there not?

A. Yes, sir.

Q. And there were a lot of nonunion men let out too, were there not?

A. If I may say——

Q. Yes.

A. The majority of our department, the frame shop, were union men.

Q. It was well unionized?

A. If they had let out all of the union men, why, they would have had to hire in, undoubtedly, practically a whole new crew.

Q. But there are still a lot of union men working there, are there not?

A. Yes, sir.

Q. Because, as you say, you generally had union men in your department?

A. Yes.

Q. Would you say that there were 50 union men in your department?

A. I cannot go into any exact figures, because I do not know.

Q. Well, do you not know——

A. No, sir.

529 Q. Do you not know the men in your department?

A. Yes.

Q. Do you not know whether they are union members or not?

A. Most of them.

Q. You know that most of them are union members?

A. Yes, sir.

Q. Well, would you not know whether 50 men in your department were union members?

A. Not now; no, sir.

Q. In July 1935?

A. Well, as I say I do not have the figures, and I do not know whether there were 50 men worked in July 1935, or not. I am not in a position to give the figures. I say, the majority of the men I believe in the frame shop in July 1935, were union men. I will not say that the majority are union men now because a lot of the men have been hired in since that time, and there being no union activities, these new men are not in the union, or have never been approached to join the union.

Q. Well, how many men were let out of the frame department from June 1935 to July, if you can give the Board that information; if you have any idea, or if you know in a rough way.

A. Well, the only ones that I know of definitely are Mr. Coonrod, Mr. Chaloux, and Mr. Sprytzer.

Q. That is, because—are those union or nonunion?

A. Which?

530 Q. The ones you just named.

A. Those are all union men.

Q. I see.

A. And those are the only three men I recall being let out, at this time.

Mr. EDWIN S. SMITH. If I may interrupt.

Mr. KLEIN. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) Mr. McClure, did I understand you to say that you are not paying dues to the union at the present time?

A. No, I am not.

Q. Is that to your knowledge common among other members of the union in the Fruehauf factory now?

A. Most of them are in arrears, to the best of my knowledge, yes, because, as I said, they were probably afraid for their jobs.

Q. Well, you would not say, would you, that a union whose members no longer pay their dues, and which holds no meetings, is anything to give the employer any particular concern?

A. No, I would not say that it would be.

Q. (By Mr. KLEIN.) You do not know how many other men were let out in the department, do you?

A. No, I do not.

Mr. CARMODY. Are you asking for information, or trying to test the credibility of the witness? If it is information you are asking for, we have got it in the record.

531 Mr. KLEIN. This is directed to the credibility of the witness.

Mr. CARMODY. His credibility.

Mr. KLEIN. Yes.

Mr. CARMODY. It was just a suggestion.

The WITNESS. Those are the only three that I know of.

Q. (By Mr. KLEIN.) So, then, they are the only three that you know of, who were let out of the department, and they were union men?

A. Yes, sir.

Q. You do not know any nonunion men who were let out, do you?

A. I cannot recall.

Mr. CARMODY. How many nonunion men were let out, just as a matter of information?

Mr. KLEIN. I will get that; that is what I want to develop. That is all I have with the witness.

Redirect examination:

Q. (By Mr. PATTERSON.) Mr. McClure, you are here testifying in obedience to a subpeona, are you not?

A. Yes, sir.

Q. Issued by this Board.

A. Yes, sir.

Mr. PATTERSON. That is all.

532 Q. (By Chairman MADDEN). Mr. McClure, was the impression of the men in the union and in the plant this summer, that there was discrimination against union members in the matter of these charges?

A. Why, I would say that the majority of the men felt that way; yes, sir.

Q. There was that impression?

A. Yes, sir.

Mr. KLEIN. Of course, what their impression might have been, or what they told him, I think is immaterial. I mean, those statements would be hearsay—I do not mean immaterial.

Chairman MADDEN. Well, they are hearsay, but they are the kind of things that all of us go on every day.

Mr. KLEIN. Well, I think——

Chairman MADDEN. All of us go on impressions, every day. But, however. Are there any questions?

Mr. CARMODY. I would like to ask a question.

Q. These frames that you work on, are they a good deal alike, or are there a good many different types of frames?

A. There are numerous types of frames.

Q. Numerous types?

A. Numerous different types.

Q. What kind of a riveting machine is used?

A. A pneumatic hammer.

Q. And the hammer is taken to the work, is it, and
533 the work not brought to the hammer? Is that it?

A. Well——

Q. In other words, the frame is on horses.

A. Yes, sir.

Q. And the gang works around the frame?

A. Yes, sir.

Q. What size rivets are used?

A. Mostly half inch.

Q. What kind of heat, what kind of a furnace do you have?

A. We have an electric copper-block furnace.

Q. How many rivets do you put in at one time?

A. Four.

Q. Four?

A. Yes, sir.

Q. How many rivets does the riveter drive in a day, on the average?

A. Well, that is a little hard question to answer, because we have no way of keeping track. We do not bother to count the rivets. They usually manage to drive around six or seven frames in a day, and there are, I imagine, on the average job around 175 or 200 rivets, and possibly more than that.

Q. To a frame?

A. Yes, sir.

Q. And you heat four at a time?

A. Yes, sir.

534 Q. Then you have got a sticker, is that it?

A. Yes, sir.

Q. And a bucker-up.

A. Yes, sir.

Q. A riveter.

A. Yes, sir.

Q. And a heater.

A. Yes, sir.

Q. Now, does the gun stay on a rivet all the time? That is, does he rivet all day long, one after the other?

A. No, sir. When a job comes to us it is bolted up, and then it has to be reamed.

Q. Yes.

A. And that is done.

Q. Who reams it?

A. The sticker.

Q. You do not have a reaming gang?

A. No, the sticker.

Q. The sticker?

A. The sticker reams and sticks.

Q. With an electric reamer?

A. Yes.

Q. Yes?

A. It has to be reamed, and while the sticker is reaming the job, after he get started up, why, we start driv-

535 ing, and I stick the rivets at the front end of the job.

Q. Then you not only heat rivets, but you stick rivets?

A. Yes.

Q. While the sticker is reaming?

A. Yes.

Q. Until he can get a few rivets ahead, or a few holes ahead.

A. Yes.

Q. And then he comes back and stays on the job?
A. Several rivets—perhaps six or seven rivets—yes, sir.
Q. Well, in the normal course of a working day of a riveting gang, quite naturally there are periods when they are not actually driving rivets?
A. Yes, sir; we have to take out the bolts.
Q. Is it not a perfectly normal thing in a riveting gang to have some conversation, perhaps about baseball, or something else?
A. We all do.
Q. Have you ever seen a riveting gang in your department work all day long without there being some conversation between the members of the gang?
A. No, sir.
Q. Would that be likely to be possible?
A. No, sir.
Q. Would it be likely to be possible, with four men working as close together as those men must work in a
536 riveting gang, to work eight straight hours, or ten straight hours per day and not have some conversation?
A. No, sir.
Q. Now, let me ask you: How is the efficiency of this gang determined?
A. Well——
Q. You say you do not keep track of the rivets which are driven?
A. No.
Q. You do have a general idea of the number of frames that are driven, do you not?
A. Yes.
Q. But the frames are not standard?
A. No.
Q. You get during the course of the day—that is, a single gang gets a great variety of frames?
A. Yes.
Q. Different makes or different varieties. Now, how do you determine the relative efficiency of your gang as against any other gang, say, with four members in it?
A. Well, by the smoothness of their work.
Q. Yes.
A. And the time it takes them on a job.
Q. Yes. Would you say that yours is a fairly efficient gang, as riveting gangs in that shop go?
537 A. Not at the present time, no, sir.
Q. It is not?
A. No, sir.

Q. What is the matter with it?
A. We have a new bucker.
Q. I see.
A. Or, rather, our bucker has been off for the past 3 days.
Q. Yes.
A. And the gang is pretty ragged, since Monday.
Q. So that the bucker is an important part of the gang?
A. Oh, yes.
Q. Do you ever have to cut out any loose rivets because the bucker does not get the rivet head up?
A. Once in a while. Sometimes we heat them, and get on them again.
Q. So that if all of the members of the gang were harmonious, irrespective of what the harmony was about, you would get better efficiency than if some of them were not in harmony with the others.
A. Yes.
Q. They should be all working together?
A. Yes, sir.
Q. Having a single purpose in mind?
A. Yes, sir.
Q. With a feeling of fraternity.
538 A. Yes, sir.
Q. Where did you go to school?
A. Southeastern High School.
Q. Are you a high school graduate?
A. No, sir.
Q. You are not?
A. I was not able to graduate. I had to leave school and go to work before I graduated.
Q. But you did go to high school?
A. Yes, sir.
Q. For a period?
A. Yes, sir.
Q. Here in Detroit?
A. Yes, sir.
Mr. CARMODY. That is all.
Mr. PATTERSON. Nothing further.
Mr. KLEIN. That is all.
Chairman MADDEN. You are excused.
(The witness was excused).
Chairman MADDEN. We will suspend at this time, to reconvene at 9:30 o'clock tomorrow morning. Please remember the hour, gentlemen, 9:30.
(Whereupon at 5:55 o'clock p. m. November 7th, the hearing was adjourned to Friday, November 8, 1935, at 9:30 o'clock a. m.)

539

Room 921, Federal Building, Detroit, Michigan, Friday, November 8, 1935

Hearing resumed pursuant to adjournment, 9:30 o'clock a. m.

Before JOSEPH W. MADDEN, Chairman, National Labor Relations Board; JOHN W. CARMODY, Member of the Board; EDWIN S. SMITH, Member of the Board

APPEARANCES

G. L. Patterson, attorney on behalf of the National Labor Relations Board.

Stevenson, Butzel, Eaman & Long, by *Victor W. Klein*, 2288 National Bank Building, Detroit, Michigan, on behalf of Fruehauf Trailer Company, respondent.

Charlton Ogburn, 120 Broadway, New York City, New York, on behalf of United Automobile Workers Federal Union No. 19375.

Hal H. Smith, 2900 Union Guardian Building, Detroit, Michigan, on behalf of Michigan Manufacturers Association, intervenors.

540 *Proceedings*

Chairman MADDEN. The hearing will come to order.
Mr. PATTERSON. Is the Board ready to proceed?
Chairman MADDEN. You may proceed.
Mr. PATTERSON. Leonard Chaloux.
Chairman MADDEN. You have been sworn, have you?
Mr. CHALOUX. Yes, sir.

LEONARD CHALOUX, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name?
A. Leonard Chaloux.
Q. Where do you live?
A. 1664 Fairview.
Q. Are you now employed?
A. No, sir.
Q. Have you been employed since you were discharged by the Fruehauf Trailer Company?
A. Yes, sir.
Q. And how much work have you had since you were discharged by the Fruehauf Company?
A. About seven weeks altogether, I think.

Q. About seven weeks in all?
A. Yes, sir.
Mr. EDWIN S. SMITH. Excuse me.
541 Mr. PATTERSON. Yes.
Q. (By Mr. EDWIN S. SMITH.) What have your earnings been, as a result of this work?
A. Pardon me?
Q. How much have you earned as a result of the work you refer to; have you figured that up?
A. No, sir; I could not say just what I had earned.
Mr. EDWIN S. SMITH. All right.
Q. (By Mr. PATTERSON.) For whom have you been working?
A. Palmer-Bee Company——
Q. What company?
A. The Palmer-Bee Company, and the Lumber Products Company.
Q. How much for each?
A. For the Palmer-Bee Company, I believe it was 4 weeks; and for the Lumber Products Company, 3 weeks.
Q. Were you paid on an hourly basis——
A. Yes.
Q. Or on a daily basis?
A. On an hourly basis.
Q. Do you remember about how much you made at the Lumber Products Company?
A. Well, it figured about $25.00 a week.
Q. About $25 a week?
A. Yes, sir.
Q. And you worked for them 4 weeks?
542 A. About three weeks.
Q. About three weeks for them?
A. Yes, sir.
Q. And how much did you make per week while you were working for the Palmer-Bee Company?
A. About $16.
Q. And you worked there how long?
A. About four weeks.
Q. Have you had any other employment since you were discharged?
A. No.
Q. Other than at those two places?
A. No, sir.
Q. Mr. Chaloux, when were you employed by the Fruehauf Trailer Company?
A. June the 8th, 1933.
Q. And in what department did you work?
A. Frame shop.

Q. In the frame shop?
A. Yes, sir.
Q. And were you in the frame shop throughout the period of your employment?
A. Yes, sir.
Q. Just what job did you have in the frame department?
A. Well, I was a rivet sticker, but that was not my
543 particular job. I did almost every job they had in there.
Q. At the time that you were discharged, what was the particular work that you were then doing?
A. Rivet sticking.
Q. Now, when were you discharged?
A. On July 5, 1935.
Q. At what time of the day?
A. 2:30 in the afternoon.
Q. Will you tell the Board what the circumstances of your discharge were?
A. Well, I was working with the gang around the frame—I was sticking the rivets—and we were about half way around, and the foreman walked up, and he had a bunch of——
Q. Who was the foreman?
A. Goodell.
Q. Yes?
A. (Continuing.) And he had some little slips in his hand, and he walked over to me, and he looked at me, and I thought he was going to ask me a question, and then he walked away again.

Then he came back there, and he said "I'm going to let you go." I said "What is the matter? Isn't my work good enough?" He said "Yes, your work is all right; I can't complain about your work; but I've got to let you go." I said "What is the matter?" And he said "Well, it isn't my fault. It is the big shots upstairs."

Q. How is that again?
544 A. "The big shots upstairs."
Q. "The big shots upstairs?"
A. Yes, sir.
Q. Were you paid off?
A. Yes, sir.
Q. On the 5th?
A. Yes, sir; I asked them to pay me off on the 5th.
Q. 2:30 o'clock in the afternoon of the 5th of July, was not quitting time, was it?
A. No, sir.
Q. That was about the middle of the afternoon?
A. Four thirty was quitting time.
Q. Four thirty?

A. Yes, sir.

Q. Now, did you see Goodell lay anybody else off, or discharge anybody, that afternoon?

A. Nobody but Woolery Coonrod.

Q. Woolery Coonrod?

A. Yes, sir.

Q. He discharged him that same afternoon, did he?

A. At the same time.

Q. At the same time?

A. Yes, sir.

Q. Now, Mr. Chaloux, did you ever go back to the Fruehauf Trailer Company?

545 A. Yes.

Q. How long after July the 5th?

A. About five weeks I think.

Q. About five weeks?

A. Yes, sir.

Q. Now, will you tell the Board why you went back there?

A. Well, the particular reason that I did go back was to see a friend of mine; and I wanted to ask him some questions. And I was standing there—there is a big door by our department, and I was standing outside, waiting for the noon whistle, so he could come out and talk to me; and I stood there for perhaps 10 or 15 minutes, when Mr. Goodell walked over to me.

Q. The same foreman?

A. The same foreman.

Q. Yes?

A. (Continuing.) He walked over to me and he said, "Do you know, I am trying to get you back in here?" I said, "Are you?" He said, "Yes." He said, "I am going up and see Halpin, and see if I can fix it up."

I said, "All right." He said, "Suppose you stick around a while." So I just stood there and waited, and waited during the noontime—it was almost 12 o'clock then, and I waited during the noontime, and talked to this fellow; and then Mr. Goodell came back about a half an hour after they went back to work and he said, "I am sorry, but

546 Halpin won't have anything to do with you." I said, "All right."

Q. Then after he told you that, did Goodell take you over to the side and tell you something?

A. Yes.

Q. What did he tell you?

A. He said, "I told Charley to tell you fellows not to attend the union meetings. It isn't my fault."

Q. Who is Charley?

A. He is the sub-foreman.

Q. (By Chairman MADDEN.) What is his last name?

A. Schwartz.

Q. (By Mr. PATTERSON.) Now, when you went back there five weeks after July the 5th, did you see how many men were working in the department?

A. Yes.

Q. Will you tell the Board whether or not the number of men working in the department was more or less than at the time you were discharged?

A. The number working in the department at that time, seemed to me to be about 15 or 20 more men than when I had worked there.

Q. I see. Now, for a month and a half or two months prior to your discharge, how many hours were you working at the Fruehauf Trailer Company plant, in your department?

A. Well, in the one pay, as I recall it—I think it
547 was a short period pay—I had 140 hours for a short period.

Q. And how did that compare with any other fellow's, anybody else in your department?

A. Well, I think at that time I had just about—I had more hours than anybody else in the department.

Q. So the fact is, you went back to the plant?

A. Yes, sir.

Q. And talked to Mr. Goodell about coming back to work?

A. Yes, sir.

Q. That is right, is it not?

A. Yes, sir.

Q. Then when Mr. Vosler says in his answer that you at no time applied for reemployment, that is not quite right, is it?

A. No, sir.

Mr. KLEIN. Of course, that is not what he says. He says according to the records of the company. I think that is what the answer says—just to be correct.

Mr. PATTERSON. Well, then the records are wrong.

Mr. KLEIN. No.

Mr. PATTERSON. So it is just as bad one way as the other.

Mr. KLEIN. Just find out if there was a record, will you please, before you proceed further.

Mr. PATTERSON. Well, the witness here does not keep the records of the Fruehauf Trailer Company, unfortunately.

Mr. KLEIN. No; but he knows whether there was a
548 record made or not. He could say that.

The WITNESS. Well, there was enough witnesses; everybody in the frame shop saw me.

Q. (By Mr. PATTERSON.) Did you tell the Board how that number of hours compared—what did you say, 147 hours?

A. 140.

Q. 140 hours. Tell the Board how that compared with the hours of other men in the department?

A. Well, as I said, I think that I had more hours at that time than any other man.

Q. (By Mr. CARMODY.) What was that period?

A. It was a short pay—a two-week period, as I recall it. It was a short period.

Q. What month?

A. I do not just recall the month, but it was just about a month, or a month and a half before I was laid off, if I recall correctly.

Q. (By Mr. PATTERSON.) May or June of this year?

A. I imagine—I believe that it was about May.

Q. Yes. Did Goodell ever criticize you for not doing proper work?

A. No, sir.

Q. Now, then, will you tell the Board—Mr. Vosler testified that you had liquor on your breath the day you were discharged. How about that?

549 A. Well, I am just like the average man. I will take a drink of liquor after I go home at night, on a pay day, but I never had the smell of liquor on my breath when I came in, in the morning, to go to work; and I could swear on a stack of Bibles I never took a drink of liquor in my life, in the morning, before going to work.

Q. Did you have a drink of liquor that day when you were discharged?

A. No, sir.

Q. You were doing your work all right, were you?

A. Absolutely. I had to. I could not have liquor on my breath, and do my work—or have a drink and do my work.

Q. By the way, did Goodell ever make any comment about the character and quality of your work?

A. He did.

Q. What did he say?

A. He told—in fact, he was a cousin of mine; he told him that I was one of the best men he had in his department.

Mr. KLEIN. Of course this is all hearsay—what he told his cousin, or anybody else.

Mr. PATTERSON. That is all.

The WITNESS. He is still my cousin.

Mr. KLEIN. He did not tell the witness.

Mr. PATTERSON. You may take the witness.

Mr. KLEIN. I will take him, all right.

550 Cross examination:

Q. (By Mr. KLEIN.) You know that during this period, after May, production sort of slipped off, did it not?

A. Yes, sir.

Q. And in June it was a little less than it was in May, was it not?

A. I could not say as to that; I do not know.

Q. But you know that it had slipped down, do you not?

A. Well, it might have slowed down to a certain extent; I suppose it did; yes.

Q. Well, you know whether or not men were being let out in June, do you not?

A. Not particularly. The only men I knew of were union men.

Q. You do not know of any nonunion men?

A. No, sir.

Q. You would not say that no nonunion men were let out, too?

A. Not in our department there was not, unfortunately.

Q. But you do not know whether nonunion men were let out or not, do you?

A. No, not in the other parts of the plant, I do not.

Q. You do not know whether they were or not?

A. No.

Q. When you started working at the Fruehauf Trailer Company, and at all times after you worked there, you never were receiving the top wages that some of the other
551 men were receiving, were you?

A. Absolutely not.

Q. How?

A. No, sir.

Q. You were not in that class of workmen, were you?

A. Well——

Q. I mean, you were not classified in the same class with some of the other fellows, or that some of the other fellows were, who were getting more pay—were you?

A. No, sir.

Q. (By Mr. CARMODY.) Do you mean that there were rivet stickers who were getting more pay than you?

A. Yes, sir; absolutely, and they were not there as long as I was.

Q. Is that so?

A. Yes, sir.

Q. (By Mr. KLEIN.) There were some union men, too, were there not?

A. He was a union man; yes, sir.

Q. A union man?

A. Yes.

Q. So he must have been a better workman than you were, must he not?

A. No; he was not.

Q. That is what you think.
552 A. Well, that is the fact.
Mr. PATTERSON. Do not argue with the witness.
Mr. KLEIN. I asked him what he thought about it.
The WITNESS. And I will give you my answer, that he was not a better workman than I am.
Q. (By Mr. KLEIN.) But he was a union man?
A. Yes.
Q. And he got more pay than you?
A. Yes, sir.
Q. I suppose the company discriminated against him because he was a union man, by giving him more pay?
A. Well, I do not know whether they did or not.
Q. No. How long have you belonged to this union, Mr. Chaloux?
A. Oh, since—I think it was in November of 1934.
Q. November 1934?
A. Yes, sir.
Q. You were not in the union when it was first organized, were you?
A. No, sir. I went to a few of the meetings, but I did not join. They were open meetings.
Q. Did you go to all of the meetings afterwards?
A. After I joined?
Q. Yes.
A. I attended regularly; yes, sir.
Q. You attended regularly.
553 A. Yes, sir.
Q. And did you pay your union dues regularly?
A. Yes.
Q. And were you urged at those meetings to try to solicit members for the union?
A. I was. I was a shop steward.
Q. A shop steward?
A. Yes, sir.
Q. And what was your job, as shop steward?
A. My job as shop steward was to collect dues; if somebody brought me dues, I was to take them, and mark them down, and bring them to the next meeting.
Q. Did you do that during working hours?
A. No, sir. I did it at noon time, and in the morning.
Q. Noon time and in the morning?
A. Yes, sir.
Q. Did you not try to get men to join that union?
A. I did; yes, sir.
Q. And did you do that on the premises of the company?
A. At noon time and in the morning.
Q. At noon and in the morning?

A. Yes, sir.

Q. You solicited new members on the premises, at noon time?

A. I did not—that is, yes; I solicited a few members; yes, I did.

554 Q. And while you were working sometimes after the noon hour, did not the conversation carry over while you were working, so that you would say to a man, "Now, why don't you join the union?"

A. No, it did not.

Q. You do not mean to say that you went out of your department to solicit members, do you?

A. No. It was right—I did not say that I solicited members during working hours. I said I solicited members at noon time.

Q. But were the men whom you solicited, men in your department?

A. Yes—there were a few union members in my department, I used to talk to.

Q. You talked to them?

A. Yes.

Q. In your department?

A. Yes.

Q. And did you not after the noon hour, carry the conversation over?

A. Not after the noon hour, no.

Q. You just stopped right there?

A. Yes, sir.

Q. And just did not talk about it any more?

A. And just did not talk about it any more, no, sir.

Q. I see.

555 A. I did not have to say anything to the union members.

Q. But the fellows whom you solicited were not union members.

A. No.

Q. Because you would not be soliciting them if they were union members, would you?

A. No.

Q. Naturally not.

A. No.

Q. Now, you take a drink once in a while, do you not?

A. Yes, I take a drink as much as the average man will do, likely.

Q. And you go to that beer garden up around Harper Avenue, do you not?

A. Not now, no.

Q. No, of course you do not, now. You are not working over there now?

A. No.
Q. But you will not deny that you were in that beer garden on the day you were discharged, were you?
A. Yes, I will.
Q. You will not deny that you were seen in that beer garden, will you?
A. Well, I do not think that I was in that beer garden.
Q. You do not think so?
A. No.
556 Q. Do you not know?
A. Well, I am not quite sure.
Q. No, you are not quite sure. You would not say that you were not in that beer garden, would you?
A. No; I would not say that I was not in the beer garden.
Q. No.
A. No, sir.
Q. And you had a drink at that beer garden, did you not?
A. I could name you 50 or 60 men who were drinking over there, when I have been in there.
Q. Then you did have a drink at that beer garden, did you not?
A. I might have; I don't deny it.
Q. Why did you say to us that you did not have a drink that day?
A. I said I did not think I had a drink.
Q. You know, do you not?
A. No, I do not know.
Q. Who does know, if you do not know?
A. Well, I do not quite remember. That is quite a while ago.
Q. You do not remember?
A. I have had a whole lot of drinks since then.
Mr. PATTERSON. Call your witnesses. Do not argue with him.
Mr. KLEIN. He does not deny that he had a drink that day.
Q. (By Mr. KLEIN.) How many drinks did you have that noon?
A. I cannot say that I had any drinks that noon,
557 because I do not remember whether I was in there or not.
Q. How many drinks did Coonrod have with you that noon?
A. Coonrod—as I recall it, I didn't see him that noon.
Q. Well, you would not deny that he was in that beer garden that noon?
A. No, I would not deny it, because I did not see him.
Q. But you do not deny that you were there?
A. I do not deny it, no.

Q. No. And you would not deny that you had a drink that noon, would you?

A. No, I would not deny it.

Q. No. And you would not deny that you had three drinks there that noon, would you?

A. Yes, I would——

Q. How many did you have, two?

A. (Continuing.) Because I usually do not drink three drinks.

Q. Did you have two drinks, then?

A. No, sir, I would not say that I had two drinks.

Mr. PATTERSON. He did not say that.

Q. (By Mr. KLEIN.) Did you have one?

A. I did not say that I had one. I said I did not remember whether I had a drink that noon or not.

Q. You know very well, do you not, that when you came back to the factory after lunch, Goodell told you that you had been drinking?

558 A. He did not.

Q. And you know that he told you that he would not have any men drinking on the premises?

A. He did not.

Mr. KLEIN. That is all.

Mr. PATTERSON. Just a moment.

Redirect examination:

Q. (By Mr. PATTERSON.) Mr. Chaloux, this department, this frame department where you were working: That is the department in this plant where they build the frame on which the whole structure is built; is that correct?

A. That is the department in the plant where they build the frames; yes, sir.

Q. And if there was a big lay-off, it would be the natural thing to lay most of the men off in the frame department, would it not?

A. Yes.

Q. Yes. Now, this fellow you mentioned who was getting more money than you were, and was also a member of the union: Do you know who he was?

A. Mr. McClure.

Q. Mr. McClure?

A. Yes, sir. He was up here yesterday.

Q. Yes. Do you know of any others of the department that the company paid more than you?

559 A. Well, there were some new men hired in there that were getting more money than I was.

Q. That were not members of the union?

A. No; they were not members of the union.

Mr. PATTERSON. That is all.

Mr. KLEIN. That is all.

Chairman MADDEN. Just a moment.

Q. With reference to this beer garden: Is that near by the plant?

A. It is about a half a block away.

Q. When you did drink at that beer garden, what did you drink?

A. Beer.

Q. Always?

A. Always; yes, sir. It is very seldom that I touch liquor; only once in a great while.

Q. Could you say on this day in question, if you had any drink, what it was?

A. Beer.

Q. Beer?

A. If I had any drink it was beer; yes, sir.

Q. Could you say positively that it was not liquor?

A. No, sir; it was not liquor.

Q. Did you ever have an accident?

A. In the shop?

Q. In connection with your work in the shop; yes.

560 A. No, sir.

Q. Or any loss of time?

A. No, sir.

Q. Or did you hurt anybody else——

A. No, sir.

Q. In connection with an accident?

A. No, sir.

Q. (By Mr. EDWIN S. SMITH.) Mr. Chaloux, you have testified that Mr. Goodell said to you at the time he called you aside, that Schwartz had warned you several times to stay away from union meetings—did you not testify to that?

A. He said that Schwartz—that he told Schwartz to tell us not to attend union meetings.

Q. Well, did Schwartz——

A. Absolutely he did not.

Q. (Continuing.) Ever tell you anything of that sort?

A. He did not. Mr. Schwartz was a member of our union at one time.

Q. And there was no such conversation?

A. No, sir.

Q. As was indicated?

A. No, sir.

Mr. EDWIN S. SMITH. That is all.

Mr. CARMODY. I would like to ask a question or two.

Q. How much work would a riveting gang do if

561 one or two members of that gang wandered around the shop, for any purpose, soliciting union memberships, or for any other purpose?

A. They would not get very much done.

Q. How long would it take the riveter to complain about that, if his sticker went away when the heater was ready to throw rivets?

A. About ten minutes; as soon as he could find the boss.

Q. And how long would it take the riveter to complain to the boss if the heater did not have the rivets heated when he was ready to drive them?

A. Well, about the same length of time, I should imagine.

Q. So that if a man was away from the riveting gang, if any member of the riveting gang was away for any purpose at all, it would hold up the work, would it?

A. Yes.

Q. And it would be noticeable to the riveting gang foreman, would it not?

A. Yes, sir.

Q. Reasonably promptly?

A. Oh, yes.

Q. The work would stop if any one member of the gang went around for any length of time, would it not?

A. Well——

Q. Unless somebody else took up his work.

A. The way we work it, if the bucker was away,
562 the sticker would buck a few rivets until he came back.

Q. Yes.

A. We do not do that with the hammer man away, however, because there is nobody else to drive the rivets.

Q. The riveter is the only man——

A. Yes.

Q. Who can handle the hammer.

A. Yes.

Mr. CARMODY. That is all I have.

Chairman MADDEN. Is that all?

Mr. PATTERSON. That is all.

Mr. KLEIN. Nothing further.

(Witness excused.)

Mr. PATTERSON. Mr. Beethway.

Chairman MADDEN. Were you in the group that was sworn yesterday?

Mr. BEETHWAY. I was, sir.

Chairman MADDEN. Proceed.

JOHN BEETHWAY, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name?

A. John Beethway.

Q. You live where?
A. 17138 Alcoy.
Q. You are in attendance at this hearing in obedi-
563 ence to a subpoena which was issued for you?
A. Yes, sir.
Q. How long—where are you employed?
A. Fruehauf.
Q. How long have you been employed by the Fruehauf Trailer Company?
A. Well, I could not say just exactly, but——
Q. Approximately.
A. Oh, about 8 years.
Q. Were you a member of the union?
A. I was.
Q. I would like to have you tell the Board, what, if anything, the foreman, Goodell, said to you during the summer of 1935, in July—June or July, regarding the union?
A. Well, the only thing he said to me was, he come up in the morning, after I started to work——
Q. What time of the day approximately would that have been?
A. Well, I go to work at 6 o'clock.
Q. (By Mr. CARMODY.) In the morning?
A. Yes.
Q. What kind of work do you do out there, starting at six o'clock?
A. Drill press.
Q. How?
A. Drill press.
564 Q. Yes?
A. (Continuing.) And he come around shortly after, and asked me if I went down to the meetings, and I said, "Yes", and he said, "If I were you I wouldn't go no more."
Q. What meetings did he mean?
A. What is that?
Q. What meetings did he mean?
A. I don't know. That is just the way he put it to me.
Q. That is all he said—"meetings"?
A. Yes, sir. He said, "I wouldn't go no more, because I have got orders to let you go." That's all.
Q. (By Mr. PATTERSON.) Did Mr. Goodell ever talk to you when he had a list of numbers or names in his hand?
A. Why, he had a piece of paper in his hand, but I didn't see the numbers or the names.
Q. Did he say anything to you about that list that he had in his hand?
A. No, sir. That is just the way he put it to me, just the way I made my statement here.

Q. He said what, again?

A. He said that—he asked me if I went to the meetings any more, and I said 'yes." "Well", he said, "if I were you I wouldn't go no more, because I have had orders to let you go."

Q. That he had orders to let you go?

A. Yes, sir.

565 Q. If you went to the meetings?

A. Yes, sir.

Q. Now, Mr. Beethway, what department are you in?

A. Frame.

Q. The frame department?

A. Yes, sir.

Q. And what is the fact as to whether or not there are more or less men now in the frame department, than there were in July of this year?

A. More or less?

Q. Yes.

A. Well, now——

Q. If you know.

A. I will tell you, I do my work, and I don't pay very much attention to that stuff——

Q. Very well.

A. Myself.

Mr. PATTERSON. That is all.

Cross-examination:

Q. (By Mr. KLEIN.) How long did you say you had been with the company, Mr. Beethway?

A. About eight years.

Q. Eight years?

A. Yes, sir.

Q. And what hourly pay do you get now?

566 A. 60 cents.

Q. 60 cents?

A. Yes, sir.

Q. Has any foreman there ever refused to discuss any problem that you ever wanted to talk to him about?

A. Not one.

Q. Not one?

A. No, sir.

Q. Has anyone out there ever refused to talk to you about anything?

A. Nobody.

Q. How have they treated you out there?

A. They have treated me all right. At one time I had a lot of trouble about something, and I went up to the superintendent and he sent me up to Mr. Vosler, and Mr. Vosler helped me.

Q. He helped you, did he?
A. Yes, sir; when I was going to lose my house.
Q. When you were going to lose your house?
A. Yes, sir.
Q. Did he help you with your house?
A. He did.
Q. Did he get a lawyer, to help you with your house—did he get a lawyer to help you out?
A. He got a lawyer to help me out, yes, sir.
Q. And the company lawyer helped you out?
567 A. Yes, sir.
Q. And the company lawyer looked after you so that you could save your house, is that correct?
A. Well, no, sir; I did not save it, but they gave me instructions, as to what to do.
Q. They helped you as best they could?
A. Yes, sir; I saved something by it.
Q. You saved something by it?
A. Yes, sir.
Mr. KLEIN. Oh, I think that is all with this witness, Mr. Chairman.
Mr. PATTERSON. That is all.
Mr. CARMODY. I want to ask a question or two right here.
Q. (By Mr. CARMODY.) Do you think that that service which the company rendered you constituted a debt that you would have to pay off by not joining the union if the company did not want you to join?
A. Oh, no.
Q. You do not think so?
A. No, sir.
Mr. CARMODY. All right.
Q. (By Mr. KLEIN.) They did not say that they would not help you because you belonged to the union, did they?
A. No.
Q. (Continuing.) Or did not belong to the union?
568 A. No, sir; they did not say that.
Q. They helped you?
A. Yes.
Q. (By Mr. CARMODY.) Did you belong to the union at that time?
A. Yes, sir; I did, and I went to Mr. Schneider——
Q. (By Mr. KLEIN.) You did belong to the union at that time?
A. Yes.
Q. And still the company helped you save your house?
A. Yes, sir.
Q. They did not say to you, "You belong to the union, and we will not help you save your house", did they?

A. No, sir.
Q. But they helped you, did they not?
A. They helped me.
Mr. KLEIN. That is all.
Mr. PATTERSON. That is all.
Q. (By Chairman MADDEN). When was this?
A. Oh, this was——
Q. What year?
A. I do not know just what year it was.
Q. Was it this year?
A. No, no; that was quite a little while ago.
Q. (By Mr. CARMODY.) Was it before Mr. Martin was employed there?
A. Oh, yes.
569 Q. It was?
A. Yes.
Mr. CARMODY. I see.
Q. (By Chairman MADDEN.) When was this union organized?
A. Oh, this union was organized—I do not recall when the union was organized in the shop.
Q. Well, it was——
A. I joined afterwards.
Q. You have said that you belonged to the union——
A. Yes.
Q. At the time of this house incident.
A. Well, I made a mistake if I said that. I got twisted. I did not belong to the union at that time.
Q. (By Mr. CARMODY.) Well, then, that changes the record here, now, if that is not a correct statement.
A. I know, and I am sorry.
Q. The record now shows your statement that you belonged to the union at that time, and that the company knew you belonged to the union——
A. No.
Q. (Continuing.) And they still helped you with your house, in spite of the fact that you belonged to the union.
A. No.
Q. That is what the record now shows.
A. No.
570 Q. Is that true?
A. That is not true.
Q. I see. Well, then, what is true? What are the circumstances, what are the facts in that connection?
A. Well, it was before. I did not belong to no union then, at that time.
Q. Oh, that is it?
A. Yes.
Q. Well, that is different.

A. I got twisted.

Mr. KLEIN. You do not mean to intimate, do you, Mr. Carmody, that the company would have helped him lose his house, because he belonged to the union?

Mr. PATTERSON. Oh, no.

Mr. CARMODY. No; I would not intimate that, but I just want the record to be straight.

Mr. KLEIN. I do not know the facts.

Mr. CARMODY. Neither do I, and we are just trying to get the facts, that is all.

The WITNESS. I am sorry.

Mr. KLEIN. All right.

Mr. CARMODY. That is all.

The WITNESS. I spoke offhand, and I got twisted. I am sorry.

571 Q. (By Mr. KLEIN.) The company treats you all right now, does it not, Mr. Beethway, as far as you know?

A. As far as I know.

Q. You are still working there?

A. Yes, sir.

Q. Regularly?

A. I am still working there regularly; yes, sir.

Q. And you have worked there for around eight years regularly, have you not?

A. Well——

Q. With an occasional layoff?

A. While they had work; yes. During slack time, I didn't.

Q. Yes. And you know that production lets up in June, do you not, at the end of June, when things slow up a little, or get a little quiet?

A. Well, no; I could not say as to that.

Q. You just attend to your job?

A. Yes.

Q. I see.

A. I really just can't say.

Mr. KLEIN. All right. That is all.

Mr. EDWIN S. SMITH. Just one question.

Q. When did this conversation with Goodell occur, about not going to the meetings?

A. That was also in July, after Mr. Coonrod, and Steve, and them got laid off.

572 Q. (By Mr. KLEIN.) Did you go to any of the meetings of the union after that, Mr. Beethway?

A. Yes, sir; I did. I went to the strike vote meeting.

Q. And at that meeting, by the way, a strike was not voted, was it?

A. No.

Q. The vote was decidedly against a strike, was it not?
Mr. PATTERSON. Now, just a moment.
Mr. KLEIN. I want to get the fact.
Mr. PATTERSON. I object to the use of the words "decidedly against."
Mr. KLEIN. Well, we will find out.
Mr. PATTERSON. All right.
Mr. KLEIN. That is all I am trying to do.
Mr. PATTERSON. You bet we will find out.
Chairman MADDEN. Ask your question.
Q. (By Mr. KLEIN.) What was the vote, do you know?
A. Well, I really could not say as to that. I don't know, myself.
Q. Were there many men there?
A. Quite a few.
Q. How many were there?
A. Well——
Q. 60 men?
A. There must have been.
573 Q. About 60?
Mr. PATTERSON. Oh, now.
Mr. KLEIN. I want to find out.
Mr. PATTERSON. Well——
A. I don't know.
Q. (By Mr. KLEIN.) Was there more than 60?
A. No, sir; I couldn't say positively.
Q. Well, were there less than 60?
A. I don't know.
Q. You do not know if there were more than 60 or less than 60?
A. I couldn't say.
Q. You could not say?
A. No, sir.
Q. Do you know what the vote was?
A. No; I don't, exactly.
Q. But you do know that they voted against a strike, do you not?
A. I know that they voted against a strike; yes, sir.
Q. And was Mr. McDonald there, at that meeting, from the American Federation of Labor?
A. He was.
Q. And did he urge the men to strike?
A. No; he didn't.
Q. He did not?
A. No.
574 Q. Did he report to that meeting that they had consulted with the employer about that situation?
A. I couldn't say as to that.

Q. You could not say?
A. No.
Mr. KLEIN. All right.
Q. (By Chairman MADDEN.) Was Mr. Martin there?
A. Yes.
Q. And he urged against a strike, did he?
A. He did.
Q. What was the talk around the plant, when you men discovered that Mr. Martin had been on both sides of the union question?
A. I am sorry, but I just did not get that question quite clear.
Q. I suppose that it came to the knowledge of the men about the plant eventually that Martin was a detective, did it?
A. Well——
Q. Was that ever talked about the plant?
A. I heard something about that around the plant after he was let out, that is all.
Q. Well, what was the talk among the men about that, if you heard any?
A. Among the men, I really don't know what the talk was about that.
Q. You did not hear any talk?
575 A. No, sir—well, all that I heard was that he got let out, that's all.
Chairman MADDEN. All right.

Redirect examination:

Q. (By Mr. PATTERSON.) What was the general character of the report at the plant, Mr. Beethway; that Martin had been fired?
A. It was, yes.
Q. Yes. Now, going back to this strike meeting for a moment—the fact of the matter is, is it not, that Mr. McDonald did not come to that meeting until after the strike vote had been taken? That is right, is it not?
A. Well, he was there, but I don't know whether he was there when the strike vote was taken or not. I don't think he was there when the strike vote was taken.
Q. No.
Mr. KLEIN. Are you telling him that now, or asking him, Mr. Patterson?
The WITNESS. No—excuse me.
Mr. PATTERSON. I am asking him.
Mr. KLEIN. You put your question, and tell him what to say in the question, it seems to me.
Mr. PATTERSON. Very well. I will ask him for the fact.
Mr. KLEIN. All right.

Q. (By Mr. PATTERSON.) What is the fact about that, Mr. Beethway—if counsel is not satisfied with the former question?

576 A. About what?

Q. About whether Mr. McDonald was there before the strike vote was taken, or not.

A. Well, now, I know that he was there, but I couldn't say whether he was there before or after, now.

Q. Well, do you remember whether Mr. McDonald said anything about a strike, before the strike vote was taken?

A. No; I don't remember that.

Mr. PATTERSON. That is all.

Q. (By Chairman MADDEN.) Why were you urged to strike? Those who spoke in favor of a strike, why did they want a strike?

A. To bring the union men back into the shop, that had gotten fired.

Q. They argued that those men had been discharged because of their union affiliations, or connections, did they?

A. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) Who was the principal speaker against the strike?

A. Against the strike?

Q. Yes.

A. Martin.

Q. And what did he say?

A. He just said that it was a poor time to go on strike, because they were making stock jobs now.

Q. Do you think that it was his remarks which

577 caused the men not to go on strike?

A. Well, that might have had something to do with it—yes, sir.

Mr. EDWIN S. SMITH. That is all.

Chairman MADDEN. That is all—are there any other questions?

Mr. CARMODY. Yes; I have a question or two.

Q. (By Mr. CARMODY.) You do not like to go on strike, do you?

A. Well, no, sir.

Q. No?

A. Nobody likes to, I guess.

Q. You would prefer to have whatever difficulties there are in the shop, adjusted, would you?

A. Yes, sir.

Q. Without trouble.

A. Without trouble.

Q. Do you feel now perfectly secure in your job at the plant, as long as you are efficient?

A. You can never say.
Q. (By Mr. KLEIN.) None of us can say that, can we?
A. No.
Mr. CARMODY. That is all.
Mr. KLEIN. We are never sure.
A. No.
Mr. PATTERSON. That is all.
578 Mr. KLEIN. Not any of us.
The WITNESS. No.
Mr. CARMODY. You may be the senior partner, after this case.
Chairman MADDEN. That is all.
(The witness was excused.)
Mr. PATTERSON. William Milne.
WILLIAM MILNE, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) Your full name.
A. William Milne.
Q. You are the "slow worker" in this matter, are you not?
A. Yes, sir.
Q. According to Mr. Vosler's testimony.
A. Yes, sir.
Q. When were you hired by the Fruehauf Trailer Company the last time?
A. The last time was around October 1934.
Q. October 1934?
A. Yes, sir. I could not remember the exact date.
Q. Pardon me?
A. I could not remember the exact date.
Q. You had worked for the Fruehauf Trailer Company prior to October 1934?
579 A. Yes, sir.
Q. When had you commenced your employment with the company on a previous occasion?
A. On the 6th of June 1933.
Q. June 6, 1933?
A. Yes, sir.
Q. And for how long a period had you worked for the company at that time?
A. From then on; from June 6, 1933 to October, I think it was, 1934, or around one year; just about one year.
Q. About a year.
A. A little over a year I guess; and then I was laid off.
Q. What happened then?
A. Well, there was a slow-down in production.
Q. And you were laid off?

A. Yes, sir.
Q. And then you returned to work the last time in October 1933; is that correct?
A. 1934.
Q. 1934.
A. Yes, sir.
Q. In what department were you employed?
A. Frame department.
Q. Were you a member of the union?
A. Yes, sir.
580 Q. When did you join it?
A. Around April 1934.
Q. Shortly after joining the union was anything said to you by your foreman about the union?
A. Well, shortly after the inception of the union, they were going to have a party.
Q. Who was going to have a party?
A. The union.
Q. Yes.
A. (Continuing.) And I happened to be going to Rochester, Michigan, on Saturday afternoon.
Q. Yes?
A. My Mrs. was out there. And I was eating in the restaurant—I went over to the restaurant, where I was in the habit of eating, and Goodell was over in there.
Q. The same Goodell who is foreman?
A. Yes.
Q. Yes?
A. And he said, "You are the very man I am looking for."
Q. Yes. What else?
A. (Continuing.) "I want you to come to work tomorrow"—which was Sunday.
Q. Yes. Well, was this party that the union was going to have, to be on Sunday?
A. No, sir; that was Saturday evening.
581 Q. On Saturday evening.
A. That was Saturday evening, and this is Saturday afternoon that I am talking about.
Q. I see. And Goodell said to you, "I want you to come to work tomorrow"?
A. "Tomorrow." And I said "I can't."
Q. And this was in April 1934?
A. Whatever time that party was to be. I couldn't give you just the date of that party now.
Q. (By Mr. EDWIN S. SMITH.) Do you mean 1934 or 1935?
A. 1934.
Mr. PATTERSON. 1934, that is the occasion.

The WITNESS. Yes.

Q. (By Mr. PATTERSON.) And what else, if anything, did Goodell say to you at that time?

A. Well, he said, "I want you to come to work tomorrow." I said, "I can't. I am going to Rochester." He said, "Forget about it, and come to work tomorrow." So him and I had a few drinks together.

Q. Oh, the foreman did a little drinking himself, did he?

A. Yes, sir; sure—oh, yes; he drinks.

Q. And he is still working out there?

A. Yes, sir; he is still working there.

Q. Yes?

A. As far as I know.

582 Q. Go ahead.

A. So we were drinking all afternoon, and I didn't go to Rochester.

Q. Now, I take it that you and the foreman Goodell at that time were pretty friendly?

A. Very good friends; yes, sir.

Q. Yes. All right. Just go ahead. Did he say anything to you at that time about the union?

A. Well, when we was leaving the restaurant—I met him I think around about 1:30 or 2 o'clock.

Q. Yes.

A. And we got out of the restaurant at 5 o'clock.

Q. You had more than one drink, then?

A. Why, sure.

Q. Yes. And so did he?

A. Yes, sir.

Q. (By Mr. KLEIN.) That was not a work day, though, was it?

A. Oh, no; and I didn't say so.

Mr. KLEIN. Well, Mr. Patterson is leading the Board to believe that.

Mr. PATTERSON. I am doing nothing of the kind, sir.

Mr. KLEIN. Well, you are dramatizing it very thoroughly.

Mr. PATTERSON. Nothing of the kind.

The WITNESS. He doesn't have to. I know all about it.

Mr. KLEIN. I know, and so do we. Apparently, you

583 have gone over it very thoroughly.

Chairman MADDEN. Just a moment.

Mr. PATTERSON. I object to that.

Mr. KLEIN. Sorry.

Chairman MADDEN. We do not want to listen to that.

Mr. KLEIN. Sorry.

Chairman MADDEN. We do not want to listen to bickering between counsel.

Mr. PATTERSON. May it please the Board, I would like to say to the Board that in several instances here Mr. Klein, counsel for the respondent, has intimated that I have coached or fixed up these witnesses; and I want the record to show that I resent those imputations.

Chairman MADDEN. All right. Proceed with the examination of the witness.

Mr. PATTERSON. All right, sir.

Q. Tell us now, Mr. Milne, what Mr. Goodell said to you at that time?

A. When we were coming out of the restaurant, he said, "Bill, don't go to the meeting tonight."

Q. Did he say anything else about it?

A. He said, "You should leave that union alone." I said to him, "You mind your own business, and you will be doing well. I am old and able enough to look after my own business." He said, "All right. I am just warning you."

584 I said, "Well, I will go to the party if it suits me."

Q. Did you go to the party?

A. No, sir; I did not go to the party. I went to sleep.

Q. Now, then, Mr. Milne, when were you discharged?

A. On the 8th of July.

Q. 1935?

A. Yes.

Q. At what time of the day?

A. 9:30.

Q. That was not your starting time, was it?

A. No, sir.

Q. (By Mr. CARMODY.) What time was that?

A. 9:30.

Mr. PATTERSON. 9:30.

Q. (By Mr. CARMODY.) In the morning?

A. Yes, sir.

Q. (By Mr. PATTERSON.) Who laid you off?

A. Goodell.

Q. What did he say to you at that time?

A. He come and handed me a slip. I was working on a frame at the time.

Q. Working with a riveting gang?

A. No.

Q. What was the nature of your work?

A. Well, I really was a lay-out man.

585 Q. A lay-out man?

A. Yes, sir; but I helped all around the shop, worked all around the shop.

Q. They had you working all around the frame shop?

A. They had me working all around the frame shop; yes, sir.

Q. How many lay-out men were there in the shop?

A. I think at that time there was seven of us.
Q. Seven?
A. Yes, sir.
Q. And when Goodell discharged you, just tell the Board exactly what he said.
A. Well, he came along and he handed me a slip, and he said, "Here you are, Bill. You know what it is all about." I said, "I sure do." That was all that was said then.
Q. Did he at that time say anything about where the order came from?
A. Sure. He said it came from upstairs.
Q. Did you subsequently go back to the Fruehauf Trailer Company's plant after you were discharged on the 8th of July?
A. I went back at noon for my pay.
Q. On the same day?
A. The same day.
Q. Did you get your pay that day?
A. Yes, sir; I got my pay about between 1 and 1:30 o'clock.
Q. Did you have any conversation with Mr. Goodell
586 on that occasion?
A. No.
Q. Did you go back to the plant on a subsequent occasion?
A. Yes, sir. That was about four days after that, for my tools.
Q. You went back for your tools?
A. Yes, sir.
Q. Did you see Mr. Goodell then?
A. Yes, sir.
Q. Did you have a conversation with him?
A. I did.
Q. What was that conversation?
A. Well, when he seen me down at the bench, where I went to pick up my tools, he came right over and he said, "What the hell do you want down here?" I said, "I came down for my tools." He said, "You have no right to be down here. Who let you down?" I said, "Mr. Larson, the chief of police. What are you going to do about it?"
Q. Was that a loud argument?
A. No; just a friendly talk.
Q. All right. Go ahead.
A. (Continuing.) I said, "What are you going to do about it?" He said, "You have no right to be down here. You are supposed to take your tools back at once." I said, "That's all right. I have got permission to come down here."

587 Q. Following that, did you have any further conversation with him?

A. Yes.

Q. What was it?

A. So after that he said, "Come on over here. I want to talk to you", and he took me over to——

Q. Where did he—go ahead.

A. He took me to another part of the plant, over behind the plate shears, where nobody could see us.

Q. Behind the plate shears?

A. Yes.

Q. What did he say?

A. He said, "Bill, I warned you a year ago about this union business. Why don't you go up and see the old man?"

Q. Whom did he mean by that?

A. Mr. Halpin, I guess.

Q. Yes.

A. (Continuing.) So I said, "I wouldn't go and see the old man. I am able enough to get a job. I can hold a job in any steel shop in this town, and if they don't let me work for them I can get a job somewhere else."

Q. Who was Mr. Larson out there?

A. Employment manager.

Q. Did Goodell ever criticize the quality or character of your work there?

588 A. Not that I know of.

Q. Did Mr. Larson ever make any comment about it?

A. Well, the day that I was fired, when I was there for my pay, I asked Mr. Larson, "Is there anything in my record against me?" He looked at it, and he said, "Not a thing. It is an A-1 record." And I seen it myself.

Q. Did Goodell——

Mr. CARMODY. You saw the card, you mean?

The WITNESS. I saw the card.

Mr. CARMODY. Yes.

Q. (By Mr. PATTERSON.) Did Goodell ever tell you were too slow as a lay-out man?

A. No, sir.

Q. Now, were there any fellows working in your department who were younger in point of service than you were?

A. Yes, sir.

Q. How many?

A. There was two.

Q. Two?

A. Yes, sir—in fact there was three.

Q. Three?

A. At one time, but one of them took a poke at him, and he got fired.

Q. I see. Now, do you know who took over your job after they discharged you, Mr. Milne?

589 A. Well, I could not say for sure who took over my job, no, sir; but there was a fellow there with about 3 weeks, about 3 months' service, and during those two or three weeks of the slack period, he was let go for a two weeks' vacation; and I was fired one Monday and he went back to work the next.

Q. I see. They had this fellow off, who had been there just a few months?

A. Yes, sir.

Q. At the time you were discharged?

A. Yes, sir.

Q. And he came back the Monday after you were discharged?

A. Yes, sir, he came back the Monday after I was discharged.

Mr. PATTERSON. That is all.

Cross examination:

Q. (By Mr. KLEIN.) These two or three other men in your department were not ordinary lay-out men, were they?

A. They were all lay-out men.

Q. All lay-out men?

A. Yes, sir.

Q. Do you know whether they were good workmen or not?

A. Not any better than I am.

Q. And you would not say they were any worse than you, would you?

A. No; I wouldn't.

590 Q. They might have been just as good?

A. Just as good.

Q. You were let out by the company in August of 1934, were you not?

A. August 1934.

Q. The first time?

A. It might have been August 1934. I couldn't tell you.

Q. And at that time did you not file a complaint with the Detroit Regional Labor Board?

A. Yes, sir.

Q. Saying that they discriminated against you?

A. Yes, sir.

Q. And did you not at that hearing say, or admit, that they probably did not lay you off because you were a union man? Did you not admit that?

A. Not at that time.

Q. At that hearing?

A. No, sir.

Q. You did not admit that?
A. I said they laid me off, for my union activities; yes, sir.
Q. Yes; but at the hearing, did you not admit in your testimony or your advice to the Board, that that probably was not the reason?
A. No, sir.
591 Q. (Continuing.) That it was a slack period.
A. It was not necessarily a slack period.
Q. But did you not admit that at the hearing?
A. Not that I remember.
Q. Not that you remember?
A. No, sir.
Q. You would not say that you did not admit it, now, would you?
A. No, sir.
Q. You would not say that you did not say that?
A. No, sir.
Q. And you were not rehired for some time, were you?
A. I was not rehired for about three months after that.
Q. No.
A. It was in the month of October, I guess, when I came back.
Q. But they did rehire you, however?
A. I don't know whether they rehired me or not.
Q. Well, the Fruehauf Trailer Company took you back, did it not?
A. Yes; they took me back.
Q. Yes.
A. But I didn't ask to go back.
Q. That is true. And they knew you were a union man?
A. Yes, sir; they knew that I was a union man.
Q. They did not say to you, "You are a union man, and we won't hire you", did they?
592 A. Not at that time.
Q. Not at that time?
A. No.
Q. But they knew you were a union man?
A. Yes.
Q. Because you had complained three months before, about that?
A. Quite so.
Q. Quite so.
A. Yes.
Q. And you worked up to this slack period——
A. Yes, sir.
Q. In July of this year, did you not?
A. Yes, sir.

Q. Do you know whether there were any non-union men who were let out during this period?

A. Not that I know of.

Q. Not that you know of?

A. All union men.

Q. You would not say that there were not any—any non-union men, who were let out, would you?

A. I would say that there was not.

Q. You would say that there were not?

A. Yes, sir.

Q. But you do not know?

A. I do not know.

593 Q. Well, why would you say that there were not any let out, if you do not know?

A. Well, they were union men.

Q. It is just because you would like to think that, is it not?

A. No, sir; it is not a question of thinking.

Q. But you do not know, you said—did you not?

A. Did I?

Q. That is what you said.

A. Well, all right, then.

Q. And I do not think you do know.

A. Well, maybe.

Mr. PATTERSON. We do not care about that.

Chairman MADDEN. Let me ask the witness a question.

Mr. KLEIN. Yes.

Q. (By Chairman MADDEN.) So far as you know—that is, so far as you know the men who were members of the union, and who were not, and as you remember the men who were let out, and the men who were not, do you remember any non-union men who were let out?

A. No, sir.

Q. (By Mr. KLEIN.) But you do not want this Board to believe—you do not want to lead this Board to believe that non-union men were not let out, do you?

A. That is something I cannot tell you anything about.

Q. All right.

594 A. (Continuing.) Because I am not in the Fruehauf Trailer Company, so I don't know that.

Q. All right. Now we have got it clear. There was a slack period in June of this year, 1935, was there not?

A. Very slack.

Q. Very slack?

A. Yes.

Q. And in July?

A. Well, I don't know.

Q. Production slowed down, did it not?

A. Well, yes; possibly.
Q. They were making stock jobs then, were they not?
A. Possibly they were.
Q. Well——
A. I do not know what they were making.
Q. Well, you were a lay-out man there?
A. Yes.
Q. And you ought to know.
A. Oh, they did not tell us.
Q. But as the work came up, you could tell, could you not?
A. How could a workman know what the job is?
Q. (By Mr. CARMODY.) Does your job card show whether it is on order, or for stock?
A. No, sir.
Q. It does not?
595 A. No, sir.
Q. (By Mr. KLEIN.) You solicited union members, did you not?
A. Yes, sir.
Q. Men who did not belong to the union.
A. Yes, sir. There were would be no use soliciting union members.
Q. Right. You argued with them to join the union, did you not?
A. I did.
Q. But you would object if someone who does not belong to the union, tells you not to belong to the union, would you not?
A. No.
Q. You would not object?
A. No.
Q. What are you complaining about here to Mr. Patterson, then?
A. What?
Q. Yes, about Goodell talking to you.
A. Goodell had no right to talk to me.
Q. Why not?
A. It was none of his business.
Q. You were good friends?
A. I said we were.
Q. Well, then, he had a right to talk to you, just as much as you have to talk to anybody about joining the union, has he not?
A. He has no right to tell me not to join the union.
596 Q. He has as much right to tell you not to join the union as you have to tell a man to join, has he not?
A. I didn't ask Goodell to join the union.

Q. Well, you asked other people.
A. Well, I am entitled to do that.
Q. You do not object if some other fellow tells you not to join the union, do you?
A. No.
Q. They have got just as much right to tell you not to join the union as you have to tell them to join the union, have they not?
A. Certainly.
Q. Why, certainly.
A. Yes, sir. Is anybody arguing about it?
Q. Now, this Saturday afternoon when you were out with Goodell, that was not during a work day, when you were drinking, was it?
A. I did not say it was during a work day.
Q. I just wanted to make it clear here——
A. It is quite clear.
Q. That it was not during a work day at all,—was it?
A. No, sir.
Mr. KLEIN. That is all.

Redirect examination:

Q. (By Mr. PATTERSON.) If I understand you correctly, Mr. Milne, your objection to Mr. Goodell telling you not to go to the union meetings, or join the union, is because he was your boss; is that correct?
A. Sure.
Q. Yes.
A. That is right.
Q. Now, you said that you did not ask the Fruehauf Trailer Company to go back to work?
A. Yes.
Q. (Continuing.) In October 1934; is that right?
A. Yes, sir.
Q. You went back to work as the result of the intervention of the Detroit Regional Labor Board——
Mr. KLEIN. I do not think that is correct.
Q. (By Mr. PATTERSON.) Did you not?
Mr. KLEIN. I would like to see the order to that effect. There is no such order.
Mr. PATTERSON. I did not say "order."
Mr. KLEIN. Well, you said "as the result."
Mr. PATTERSON. Of the intervention.
Q. (By Mr. KLEIN.) That is, did they make an order, did the Regional Labor Board make an order, directing that you be taken back?
Mr. PATTERSON. If he knows.
Q. (By Mr. KLEIN.) If you know.

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598 A. I cannot tell you that, but I will give you my explanation of it. I was working for the Brown-Hutchinson Iron Works, and they were not doing very much, and I came down past the shop, the Fruehauf Trailer Company shop, and I stood there about five minutes, when Goodell came out, and he said, "Hello. You are just the man we are looking for. We were going to send for you."

Q. (By Mr. PATTERSON.) That is what he said?

A. Yes. He said, "Go up to the employment office, and I will send a requisition up for you." So I went up there, and stayed there for about two hours before there was any notice taken of me. Then after I went back down there in the shop, after I started the next day——

Q. (By Mr. CARMODY.) You got a job that day, did you?

A. Yes, sir.

Q. I see. And you went to work the next day?

A. I went to work the next morning.

Q. Yes.

A. So I was sent over to a certain party, to take some work over to him, and he said to me, "Bill, I am going to warn you. Goodell told us two or three days ago 'I have got to take Bill back, but don't talk to him. I am going to get clear of him just as soon as I can.' "

Mr. PATTERSON. That is all.

Recross-examination.

599 Q. (By Mr. KLEIN.) You worked there how long, since then?

A. Since October, since the last time I was let out.

Q. You did not try to get that job, did you?

A. No, sir.

Q. You told me a few moments ago that they sent for you, that they wanted you to work, and that you were willing to work for them?

A. Yes, sir.

Q. You were working for someone else——

A. Goodell was told to take me back——

Q. Just a moment.

A. Excuse me.

Q. You were working for someone else then, were you not?

A. What about it?

Q. You did not have to quit your other job, did you?

A. No.

Q. You thought that this was a better job, did you?

A. What if I did?

Q. You wanted to work there?

A. What if I did. That is all right.

Mr. KLEIN. Surely it is all right.

The WITNESS. Yes.
Mr. KLEIN. It is fine.
The WITNESS. Yes.
Mr. KLEIN. That is all.

600 Q. (By Chairman MADDEN.) You do not purport to know at all, do you, what went on between the representatives of the Regional Labor Board and the officers or the foremen of your company, which might or might not have led to your being taken back; do you?

A. No, sir.

Q. You do not know anything about that?

A. That is only what I was told when I went back down in the shop, by the boys— "Look out, Bill. Goodell was told to take you back."

Chairman MADDEN. I will say for the purpose of the record that a great many of the activities of the old labor board and its regional officers were completely unrecorded. It was simply a matter of oral negotiations between a representative of the board, and an officer or a representative of a company; and the consequence is that you may look in vain for a great deal of that sort of thing.

Mr. KLEIN. I think there was a record.
Chairman MADDEN. That is, in many cases.
Mr. KLEIN. In this case.
The WITNESS. Sure, there was a record.
Chairman MADDEN. Well, I hope——
Mr. KLEIN. We have tried to get it, but we have not been able to locate it as yet.

There was no order entered, to take this man back,
601 and this record shows that he had a job elsewhere, and they asked him if he wanted to come back. If he had insisted on coming back, he would have been out there seeking employment.

The WITNESS. Not necessarily.
Chairman MADDEN. Mr. Klein——
Mr. KLEIN. Yes?
Chairman MADDEN. He testified that he did have a job at another place.
Mr. KLEIN. Yes.
Chairman MADDEN. But that they were not doing very much there.
Mr. KLEIN. But he still was working.
Chairman MADDEN. And of course he wanted a steadier job.

Q. (By Mr. PATTERSON.) Mr. Milne, did you have something further that you wanted to add?

Q. (By Chairman MADDEN.) If you have anything more to say in that connection, we will hear you.

Mr. KLEIN. I might say, Your Honor, that I have not been able to get any further information from the Board. I have inquired as to who the stenographers were, and what the record showed, but I have not been able to get it.

Chairman MADDEN. What about the company?

Mr. KLEIN. The company did not have any transcript of it. There was no transcript.

Mr. EDWIN S. SMITH. Was Mr. Vosler present at that hearing?

602 Mr. KLEIN. Were you present at that hearing, Mr. Vosler?

Mr. VOSLER. Yes.

Mr. EDWIN S. SMITH. It might be interesting to have Mr. Vosler tell us something about what went on there.

Mr. VOSLER. I shall be glad to tell you, sir. At that hearing there was no decision rendered. There was the case of this party, and Hillman, and—I have forgotten whether there was a third one in there or not.

Mr. PATTERSON. Was that the time of the Woolery Coonrod matter?

Mr. VOSLER. No.

Mr. PATTERSON. It was not?

Mr. VOSLER. No, sir; it was not. The matter was adjusted by our reemploying Hillman, and with the further suggestion to the Board that when we had work, as work was resumed, we would reemploy Milne.

Mr. KLEIN. Even though you knew that he was a union man.

Mr. VOSLER. Yes, sir.

Mr. EDWIN S. SMITH. That was a purely mediatory conference, was it not? That is to say, there was not any report or recommendation by the Board?

Mr. VOSLER. No.

Mr. EDWIN S. SMITH. It was just an agreement.

Mr. VOSLER. Yes. They asked us to get together.

Mr. EDWIN S. SMITH. They asked you to get together?

603 Mr. VOSLER. Yes, with Mr. McDonald, as I recall it, and thresh it out; and that is the way it was settled.

Mr. PATTERSON. I have no further questions of this witness, may it please the Board.

Mr. EDWIN S. SMITH. I have one or two questions.

Q. Mr. Milne, were you an officer of the union at the time you were discharged?

A. Yes.

Q. What was your office?

A. On the grievance committee.

Q. What?

A. On the grievance committee.
Q. The grievance committee?
A. Yes, sir.
Q. How long had you been a member of the grievance committee?
A. I was elected on a Friday night, and I was fired on a Monday.
Q. What were your duties as a member of the grievance committee of the union?
A. Well, we were supposed to get in contact with the firm, the manager of the firm.
Q. And you did not have any time to function on that committee?
A. I never got a chance.
Q. At what time, or at what period generally were the officers of the union elected, do you remember?
604 A. Well——
Q. Were all of the officers elected at one meeting?
A. The original way was to elect the officers at the end of the year, but when all of the officers were fired they had to take what they could get on Friday night.
Q. (By Mr. Chairman MADDEN.) And you were part of what they could get?
A. I was a part of what was left on Friday night, but after Monday I was not even a part of it.
Q. (By Mr. EDWIN S. SMITH.) Well, then, you mean that the other officers were elected some time before that?
A. Yes, sir.
Mr. EDWIN S. SMITH. That is all I have.
Mr. CARMODY. I would like to ask a question or two.
Q. You have quite a burr to your voice.
A. Yes.
Q. How long have you been in this country?
A. Since 1923.
Q. 1923?
A. Yes.
Q. Are you a naturalized citizen?
A. Yes, sir.
Q. Where did you learn your trade?
A. Aberdeen, Scotland, and Glasgow.
Q. Aberdeen and Glasgow?
605 A. Yes, sir.
Q. What trade did you learn over there?
A. Shipbuilding.
Q. Shipbuilding?
A. Yes, sir.
Q. How long have you been working?
A. Oh, since——

Q. Approximately?
A. 1905.
Q. And you learned lay-out work as a part of your apprenticeship in the shipbuilding trade, did you?
A. Yes, sir.
Q. And you do consider yourself to be a skilled lay-out man?
A. There is nothing in steel that I cannot lay out.
Q. You can work from blueprints?
A. Yes, sir; any blueprint.
Q. Any blueprint?
A. Yes, sir.
Q. Where did you get the information that you had a right to join a union, of your own choice?
A. I have always been a member of a union.
Q. You have always been?
A. Yes, sir; since 1907 I have been a member of a union.
Q. And you did not get the impression, when you came to this country, that it was not safe——
606 A. No, sir.
Q. For a workman to belong to a union?
A. I don't see why it should not be safe.
Q. Why? What right does a man have to join a union?
A. Why, he has every right to join a union.
Q. Do you think that a man can join a union and still be a good workman?
A. Sure, he can.
Q. Do you think that a man can join a union and still be an efficient workman?
A. Yes, sir.
Q. What makes you think that?
A. Why, he can join a union for his own protection, for that matter, and then there is the fraternal side of it, too.
Q. Yes, but who gives a man the right to join a union? You are in America now. Where did you get the notion that a workingman has the right to join a union?
A. Well, over on the other side it is compulsory to join a union, almost, if you want to get a job.
Q. It is?
A. Yes, sir. That country is 100 percent trade unionist. The minute your apprenticeship is through with, you join a union.
Q. Yes. Well, we are in another country now, you know.
A. Well, even so, why shouldn't it be; why shouldn't
607 the workmen be organized? A man is entitled to it, entitled to organize, if he wants to.
Q. Well, do you think that any of the laws of this country give him that right?

A. Well, we have got laws, surely, in this country, to give him that right.

Q. Where did you learn to think that a man has the right to join a union in this country?

A. I can read.

Q. You can read?

A. Yes, sir.

Q. And you read that there is a law here——

A. Yes, sir.

Q. That gives a man that right?

A. Yes, sir.

Mr. CARMODY. That is all.

Q. (By Mr. KLEIN.) Did you ever read that a man does not have to join a union, if he does not want to?

A. There is nobody has to join a union, if he does not want to, in this country.

Mr. KLEIN. All right.

A. (Continuing.) At the present time.

Mr. KLEIN. All right.

Mr. PATTERSON. Mr. Milne——

Mr. KLEIN. At the present time.

608 Redirect-examination:

Q. (By Mr. PATTERSON.) Mr. Milne, you say that you were elected on a Friday night?

A. Yes, sir.

Q. As a member of the grievance committee of the union?

A. Yes, sir.

Q. And on Monday you were discharged?

A. Yes, sir.

Q. Was Mr. Martin present at that meeting of the union when you were elected?

A. Yes, sir.

Mr. PATTERSON. That is all.

Q. (By Chairman MADDEN.) Mr. Milne, you said when you went back for your tools that you told Mr. Goodell, the foreman, that you had the permission of—I think you said, the chief of police.

A. Mr. Larson, the chief of police.

Q. Well, is Mr. Larson the chief of police?

A. They have got police there over and above Larson—the watchmen.

Q. What?

A. The watchmen, the gatekeepers.

Q. Well, it was testified to here yesterday as I recall it that Mr. Larson was chief of the personnel department—I believe.

A. Well, this is Gus.

609 Q. Gus?
A. He is the chief of their police department.
Q. This is Gus?
A. Yes. He is the chief gate-keeper, if I understand it correctly.
Q. (By Mr. CARMODY.) He is not the employment manager?
A. No, no.
Q. That is a different Larson?
A. Yes. He won't let you go through that gate unless you show your badge.
Q. (By Mr. KLEIN.) He is a watchman?
A. Yes.
Q. As you come into the gate.
A. Yes.
Mr. CARMODY. It sounds almost like Minneapolis, with so many Larsons in one place. Now, Mr. Milne, I want to ask you another question.
Q. In all of your experience as a union man have you ever encountered a man like Martin?
A. No, sir.
Q. Who was employed by a company to spy upon the activities of the union men.
A. No, sir; absolutely not. I did not think that there was a working man in that class, in that category, by a long shot. He is not even a man.
610 Q. It was a surprise to you——
A. Absolutely.
Q. to find an officer, a fellow officer of your union to have been on the payroll of the company?
A. Yes, sir.
Q. And reporting to the chief production officer of the company?
A. Yes, sir.
Q. (Continuing.) The activities of the union and the men in it?
A. Yes, sir; it was, absolutely.
Q. It was a surprise.
A. It was absolutely a surprise to me.
Q. Yes.
A. I never had that happen before.
Q. What do you think of him?
A. How?
Q. What do you think of him, as a working man?
A. Well, I answered that, as far as he is concerned. I hope they are not all like that. God help us, if they are.
Q. Do you think it would be possible to create—or that you can have harmony in a plant where it is generally known

that the company has done that kind of thing, or is likely to do that kind of thing, and hire that kind of a man?

A. No, sir; I do not.

611 Q. You do not think that is the best way to get harmony?

A. It is the best way to cause trouble.

Q. You think it is?

A. And disruption.

Mr. KLEIN. That is all opinion testimony, of course.

Mr. CARMODY. Yes; it is his opinion.

Mr. KLEIN. Yes.

Mr. CARMODY. I asked him for his opinion.

Mr. KLEIN. All right.

Mr. CARMODY. As an experienced union man.

Mr. KLEIN. Yes.

Mr. CARMODY. And as a working man generally in this plant, and as a member of the union, and a fellow-officer with Martin.

Mr. KLEIN. I think that all of this testimony is objectionable, as far as the respondent company is concerned.

Chairman MADDEN. We should be very glad to have the opinion of anyone who would like to testify on the question.

Mr. KLEIN. I appreciate that, but I think that it has no bearing on this particular issue here.

Q. (By Mr. PATTERSON.) Mr. Milne, were you present at the union meeting when the strike vote was taken?

A. Yes, sir.

Q. That was when, July 8th or 9th?

A. Well, no, sir; it must have been around July 5th, I should say.

612 Q. July 5th?

A. Yes, sir.

Q. Or along in there?

A. No; July 8th.

Q. July 8th?

A. Monday night, July 8th.

Q. In other words, that was the night of the same day that you got fired——

A. Sure.

Q. Was it not?

A. Yes.

Q. How?

A. Yes, sir; it was.

Q. Will you please tell the Board what the reason was for considering a strike by this union?

A. For the discharge of the officers of the union.

Q. In other words, all of this talk about a strike, and the strike vote, resulted from the fact that these men had been discharged, is that correct?

A. Absolutely.
Q. Now, then, who talked against the strike?
A. Martin.
Q. Did anybody else besides Martin talk against the strike that night?
A. There was one man from the machine shop, but
618 I cannot remember just what his name was.
Q. Do you know the result of the strike vote?
A. It was against a strike.
Q. But you do not know the figures?
A. I don't know exactly.
Q. The votes for and against?
A. They never were counted, because they were afraid of it getting back to the firm.
Q. Yes?
A. (Continuing.) Which it did. The members of the union never knew what the strike vote was, but the firm did——
Q. And at—excuse me.
A. The Fruehauf Trailer Company did.
Q. And at that time was Mr. Martin an officer of the union?
A. Yes, sir.
Q. What office?
A. He was treasurer of the union at that time.
Q. And do you remember when Mr. Martin was elected treasurer of the union?
A. No, sir.
Q. You do not remember that?
A. I could not remember that.
Q. He had been treasurer of the union however for some period of time, had he not?
A. He had been treasurer of the union for quite a
614 few months, yes sir.
Mr. PATTERSON. That is all.
Chairman MADDEN. Is that all?
Mr. KLEIN. Nothing further.
Chairman MADDEN. That is all.
(The witness was excused.)
Mr. PATTERSON. Arthur Hillman.
ARTHUR HILLMAN, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name please?
A. Arthur Hillman.
Q. Did you formerly work for the Fruehauf Trailer Company?
A. I did.

Q. From when until when, was the last time that you worked for them?

A. The last time, I believe that it was around September, when I went back to work, until July.

Q. Of what year?

A. That was 1934—until July.

Q. (By Mr. EDWIN S. SMITH.) September 1934?

A. Yes, sir.

Mr. PATTERSON. Yes?

A. Until July 2nd, 1935.

615 Q. (By Mr. PATTERSON:) You were discharged three days before this Act became effective, were you?

A. Yes, sir.

Q. And in what department of the plant did you work?

A. The machine shop.

Q. At the time of your discharge, what if any office did you hold with the union?

A. Vice president.

Q. Vice president.

A. Yes, sir.

Q. And you got fired the same day that the president of the union got fired, did you not?

A. No, sir; I believe it was the day after.

Q. The day after?

A. I believe so.

Q. Will you tell the Board, please, what happened at the time that you were discharged?

A. Well, just a few minutes before quitting time, the foreman came up to me and told me that he would have to lay me off.

Q. (By Mr. CARMODY.) Who was the foreman?

A. Tony Smith.

Q. Smith?

A. Yes, sir.

Q. (By Mr. PATTERSON.) He was the machine shop foreman?

A. Yes, sir.

616 Q. Did he have a list with him?

A. He had a list in his hand; yes, sir.

Q. Did you see what was on that list?

A. No, sir. There was some figures on it.

Q. Figures?

A. Yes.

Q. Did it look to you like badge numbers?

A. It looked to me like it was badge numbers; yes, sir.

Q. Had Tony Smith, the foreman, said anything to you about union activities prior to the time when you were discharged?

A. Yes.

Q. When?

A. About a week before I was laid off.

Q. What did he say?

A. About a week before I was laid off, he came to me and he said, "Did you know that the company knew you were an officer of this union, from the time it was formed?" I said, "Well, I suppose possibly they did know that I was."

And then he was interrupted by somebody else, and there was nothing more said about it.

Q. How long had you been vice president of this union, Mr. Hillman?

A. About one year.

Q. When was this fellow Martin—strike that out.

When did Martin become treasurer of the union?

617 A. Well, I imagine it was about the same length of time.

Q. Do you remember when Martin was hired in the plant, or were you there then?

A. Yes; I was there.

Q. In what department was he hired?

A. Maintenance.

Q. And shortly after he became an employee of the company, did he join the union?

A. Yes, sir.

Q. Did you ever talk to Martin while he was treasurer of the union?

A. Many times.

Q. What did he say about the union?

A. Well——

Q. Was he encouraging union organization?

A. He was.

Q. Now, was Martin generally in attendance at the union meetings?

A. Yes, sir; he was. I do not believe that he ever missed a meeting.

Q. Now, when did Martin give up the job as treasurer of the union?

A. When he was asked to resign.

Q. And do you know when it was that he was asked to resign?

A. Some two or three months ago.

618 Q. The men were getting a little bit suspicious of him, were they not?

A. They were.

Q. Yes. What is the fact, Mr. Hillman, as to whether or not that suspicion created confusion and unrest among the men in the plant?

A. Oh, yes; it did. They complained to me about it quite a few times.

Q. Did Martin have the records of the names of all of the men in the union?

A. He did have that information in his possession at one time or another; yes, sir.

Q. In other words, his job was the keeping of the records of the dues that every union man paid, as treasurer; is that not right?

A. No, sir; not quite.

Q. How was that, then?

A. The position of treasurer of the union does not include that, but he had gotten hold of the books at one time I think for a short period of time.

Q. Oh, yes. I see. He had a list, then?

A. Yes.

Q. (Continuing.) Of every union man, every man who was in that union?

A. He did.

619 Q. Yes. Now, when he was asked to resign from the union, as treasurer, did he resign?

A. Yes, sir.

Q. Did he turn over the money that he had in his possession, if any?

A. Part of it.

Q. What do you mean by "part of it"?

A. Well, according to what the books showed, as to what should have been turned over to the Local, and the check that he gave me—there was a slight difference between that and the books.

Q. How much of a difference?

A. Almost $30.

Q. If I understand you correctly, the books showed that he should have turned over to the Local $30 more than he actually did turn over; is that correct?

A. Almost $30.

Q. Almost $30?

A. Yes, sir.

Q. Did he say that he was keeping that for salary, or did he make any explanation about it?

A. He told me—he came up to my house one day and told me that he would straighten it up in some way that was satisfactory.

Q. Did he ever straighten it up?

A. Not yet.

620 Q. So it looks as though this fellow—well, strike that out.

Martin, then, at this time——

Chairman MADDEN. I would like to say at this time to Mr. Vosler: I think you owe the union that money. I think the company owes them that money. When you plant a man in

a shop like this, to pretend to be a workman, when he is not, and to join a union and pretend to be a union member, when he is not, and to get himself elected to office, as treasurer of the union, and handle the funds of the union, I think he is your man, and I think you owe the union his defaults.

Mr. KLEIN. At this time, for the purpose of the record, I take exception to the attitude and statement of the chairman of this impartial Board——

Chairman MADDEN. I said——

Mr. KLEIN. Making a statement like that, before there is any determination of whether or not there is any money due, from any records.

Chairman MADDEN. I say, if there is that default.

Mr. KLEIN. Well,——

Chairman MADDEN. Then I think the company owes the union that money.

Mr. KLEIN. Yes.

Chairman MADDEN. I am saying that on the basis of Mr. Vosler's description here yesterday——

621 Mr. KLEIN. Yes.

Chairman MADDEN. Of what he did with Martin.

Mr. KLEIN. But I think it might be well if it were determined from the records whether there was any deficiency, before such a statement as that is made, sir.

Chairman MADDEN. I simply say that if there is this deficiency, the company owes it, in my opinion, to the union.

Mr. KLEIN. Well, I want to note an exception on the record to the statement.

Chairman MADDEN. You may have your exception.

Mr. EDWIN S. SMITH. Do you care to bring Mr. Martin in, as one of your witnesses, Mr. Klein?

Mr. KLEIN. These gentlemen have the records, and they ought to know where their funds went.

Mr. EDWIN S. SMITH. I have asked you a question.

Mr. KLEIN. We have no control over Mr. Martin, sir.

Mr. EDWIN S. SMITH. Well——

Mr. KLEIN. I have no idea where he is. I have not seen the man, and I do not know anything about him—other than his job here.

Chairman MADDEN. When you say "I" do you mean "we" in the sense that you, as a lawyer, are speaking for yourself and your client?

Mr. KLEIN. No, sir. I understand that Mr. Vosler also does not know where he is.

622 Chairman MADDEN. Do you care to confirm that, Mr. Vosler?

Mr. VOSLER. I do not know where he is, sir.

Chairman MADDEN. Do you have any way of getting in

touch with him for the purpose of bringing him before this Board?

Mr. VOSLER. No, sir.

Chairman MADDEN. You have not?

Mr. VOSLER. No, sir.

Mr. PATTERSON. If I might suggest to the Board, may the company be asked whether they have inquired of the Pinkerton Detective Agency, as to where Mr. Martin is?

Mr. VOSLER. No; I have not talked to them about it. I was told ten days ago that he was going out of the city and that is as much as I know about it.

Chairman MADDEN. Proceed.

Q. (By Mr. PATTERSON.) Now, Mr. Hillman, what is the fact as to whether or not any of the officers of this union, or any of these seven men named in the complaints filed in these two cases—any of them—were laid off before the records of the recording secretary were turned over to Mr. Martin?

A. None.

Q. All of them were laid off after Martin got those records, were they?

A. Yes, sir; afterward.

Q. Yes. Now, was there anybody else laid off in the machine shop, the day you were laid off?

623 A. No, sir. I believe that I was the only one—that is, speaking of the day force. There had been some laid off of the night force a week or so before.

Q. When had the night force gone on?

A. Oh, a month or two before the time I was laid off, I should say.

Q. About a month or two before the time you were laid off?

A. Yes, sir; or possibly three months.

Q. Now, did you make a check of the number of employees who were in the machine shop two or three weeks after you were laid off?

A. I inquired as to who had been hired, and who had not been.

Q. Well, were the employees in the machine shop—was the number of employees in the machine shop greater or less?

A. Greater.

Q. Two weeks after you were discharged?

A. Greater.

Q. Greater than it was at the time you were discharged?

A. Yes, sir.

Q. Do you know how much greater?

A. I do not know the exact figures; no, sir. I imagine

about ten men. I know they put on two men, on my machine, after they laid me off.

Q. Within how long after you were discharged?

A. A week or ten days.

624 Q. What was the practice of this company in previous years when a slack period came along, as to what men would be laid off first?

A. They most generally laid off the new men first.

Q. Yes. Was there anybody in the machine shop whose term of service was shorter than yours?

A. Yes, sir.

Q. How many?

A. I imagine about 50 percent.

Q. About 50 percent of the men in the machine shop had not been there as long as you had?

A. Yes, sir; that is right, about 50 percent.

Q. Did Smith, the foreman, ever complain about the character or the quality of your work?

A. No, sir, he did not. He never told me he was not satisfied with my work.

Q. Nobody ever said to you that you came onto the job drunk?

A. No, sir.

Q. Or that you worked too slowly?

A. No, sir.

Q. Or that you were hard to handle?

A. No, sir.

Q. Or that you were too belligerent?

A. No, sir.

Mr. PATTERSON. That is all.

625 Q. (By Mr. EDWIN S. SMITH.) Mr. Hillman, I wish you would tell the Board a little bit more than you have hitherto about the relationship of Martin with the union. You say you do not recall exactly when he was elected treasurer?

A. No, sir; I do not, but I imagine that he was treasurer for about a period of one year.

Q. About one year?

A. Yes, sir.

Q. And you say that he attended the meetings regularly?

A. Yes, sir; he did.

Q. Well, now, in a general way, what sort of a role did he play at the meetings?

A. Well, he seemed to be very genial, and very prone to recite poetry, when an important question came up.

Q. Just what do you mean by that; as a joke——

A. No.

Q. Or as you speaking seriously?

A. I am speaking seriously. It seemed to me that he tried to disrupt the meetings—I am very sure that was his intention—to distract the attention of the meeting when there was an important question coming up.

Q. Well, was there not somebody there to rule him out of order, when he began to recite poetry?

A. There was.

Q. Well, was he ever ruled out of order?

626 A. Yes, sir; he has been ruled out of order quite a good many times.

Q. What was his activity, if any, that you know of, in getting members for the union?

A. Well, he had signed up some members.

Q. How do you know he signed up any members?

A. Well, because he tried to—the way I figure it out, he tried to entice me to sign up a member there in the shop at one time, and I refused to sign the application. I told the man to take it to Mr. Martin, the one who spoke to him about it.

Q. Well, now, will you just describe that situation to the Board a little more fully.

A. Well, this man——

Q. You say that he tried to entice you——

A. Yes.

Q. To sign up a man in the shop?

A. Yes, sir.

Q. What did he do?

A. Well, he came around at noon——

Q. Yes.

A. And he said that he would bring a member—send a member over to me, and to sign his application and take his money.

Q. Did he mention the name of the man to you?

A. Yes, sir.

Yes?

627 A. And then this man did come over there and his blank—I figured that Martin had filled the application out; but when I saw the blank, it was blank; so I told the man—I said, "You had better go back to Mr. Martin, and have him fill it out himself." And he did. He went and got Mr. Martin, and Mr. Martin came over to my machine, and we stood there, and they filled the blank out.

Q. Who filled it out?

A. Mr. Martin and this fellow who wanted his application filled out—the prospective member.

Q. Well, it is not a very complicated application, is it?

A. No, sir; it is not.

Q. Well, then, just what do you mean when you say that they filled it out?

A. Well——

Q. Did one of them fill it out, or did both of them fill it out?

A. The man had to put his name and address on the application, of course.

Q. And Mr. Martin saw him do that?

A. Mr. Martin saw him do that, and then Mr. Martin had to sign the application also, as recommending him for membership.

Q. Was that man subsequently admitted——

A. Yes, sir.

Q. As a union member, a member of the union?

628 A. He was.

Q. Do you know of any other members of the union whom Mr. Martin solicited, either directly or indirectly, through some one else?

A. No, sir, I do not; I could not mention any other occurrence of that sort.

Q. Did he ever make any remarks at meetings of the union about his success in getting members?

A. Not that I can remember; no, sir; but he always seemed to me to act like he would like to have the meeting go on until it came to a very important question of some kind, and then it seemed like he was trying to obstruct the meeting, to me.

Q. Did he ever at any meeting of the union urge upon the members generally the desirability of getting new members, if you recall?

A. I do not recall; no, sir.

Mr. EDWIN S. SMITH. That is all.

Cross-examination:

Q. (By Mr. KLEIN.) Who was this man who signed this membership application?

A. The application?

Q. Yes.

A. I do not care to bring that man's name into the matter.

Q. Well, who has those application blanks, then—or who has that application blank?

629 A. I do not know who has it now.

Q. Well, who has your records?

A. Well——

Q. You are vice president of the union?

A. The records have changed hands two or three times. I do not know whether the application——

Q. Who was that man?

A. Who do you mean?

Q. This man whose application was gotten, that you have just been talking about here.

Mr. CARMODY. Let me ask a question right there.

Mr. KLEIN. Yes, sir.

Mr. CARMODY. Is that man still at work there?

The WITNESS. Yes.

Mr. CARMODY. The same man?

The WITNESS. Yes.

Mr. CARMODY. Would his job be in danger if he is still working there and a member of the union?

Mr. KLEIN. We have got any number of union men working there.

Mr. CARMODY. But you are asking this witness to reveal the name of a man who is working there now, and who is a member of the union.

Chairman MADDEN. Mr. Klein.

Mr. KLEIN. Yes, sir?

630 Chairman MADDEN. Will you explain to the Board the importance of your knowing that?

Mr. KLEIN. I would like to see the application.

Chairman MADDEN. I can hardly understand——

Mr. KLEIN (continuing). To see whether or not Mr. Martin's name is on the application.

Chairman MADDEN. Well, again——

Mr. KLEIN. That is what this witness has testified to.

Chairman MADDEN. Again, I should like to know from you the importance of knowing the man's name.

Mr. KLEIN. The importance is to test the credibility of this witness, sir. If this man is testifying that Martin signed the application, and Martin's name is not on the application, then this man is not telling the truth on that point, and it would test his credibility on many other things.

Chairman MADDEN. Why do you suspect his credibility on that matter? Why should not Martin have signed the application?

Mr. KLEIN. Well——

Chairman MADDEN. He was a member of the union, he was an officer of the union. Why should he not?

Mr. KLEIN. Well, if the Board please, I think that is the usual way to test the credibility of a witness.

Chairman MADDEN. Well, but——

Mr. KLEIN. He has made a statement, and I would
631 like to see that application.

Chairman MADDEN. On this very minor collateral point, I am not willing to expose anyone to the system which Mr. Vosler described here yesterday, with respect to this company.

Mr. KLEIN. I again take exception to the remarks of the chairman. I think it is the usual procedure, when a wit-

ness testifies as to a fact, that we be allowed to determine whether that fact is so or not, and if he is not telling the truth——

Chairman MADDEN. But——

Mr. KLEIN (continuing). On that point, it is the rule of law that his testimony——

Chairman MADDEN. Mr. Klein, will you not be fair about this?

Mr. KLEIN. Yes.

Chairman MADDEN. And not bluster about nothing at all.

Mr. KLEIN. I do not think I have been.

Chairman MADDEN. If you can explain to me how this point has any specific importance——

Mr. KLEIN. Mr. Chairman, as dean of a law school, and as a distinguished student of the law, I am sure you know the rule that when a witness on the witness stand proves to be incredible on one point, it may be determined by the body hearing the testimony, the court or any other tribunal, that he may also be incredible as to the rest of his testimony.

632 I think that is the established rule of law, and I am entitled to test the credibility of this witness, by checking up in this way.

Chairman MADDEN. Even on this most minor and collateral point?

Mr. KLEIN. Yes.

Chairman MADDEN. And no matter——

Mr. KLEIN. I think that is the rule of law.

Chairman MADDEN. And no matter what risk the little advantage that you might gain, would expose someone else to?

Mr. KLEIN. Well, the Board seemed to think it was material, because it devoted a considerable period of time to inquiring into how Mr. Martin supposedly solicited this one member.

Chairman MADDEN. Well, ——

Mr. KLEIN. And therefore I am assuming its importance.

Chairman MADDEN. I am going to ask you this question: Do you say, for the company, that Mr. Martin did not solicit members for the union?

Mr. KLEIN. I do not know the fact. I am trying simply at this time to develop whether or not this witness is telling the truth about this one incident. That is all I am trying to determine. I do not know the other facts in that connection.

Mr. PATTERSON. May it please the Board——

Mr. KLEIN. And it is my privilege, I think, on cross

633 examination of the witness, to test his credibility in this way, under the established rules of law.

Chairman MADDEN. And you are the same person who was here yesterday——

Mr. KLEIN. The same person, as you see.

Chairman MADDEN. And objected to your client naming a great national detective agency——

Mr. KLEIN. I do not care——

Chairman MADDEN. Which has many ways of protecting itself——

Mr. KLEIN. I do not care——

Chairman MADDEN. Because you claimed that the information was privileged and confidential.

Mr. KLEIN. And the chairman was very indignant because I asked the witness not to disclose that, and now you are equally indignant because I am asking this witness to disclose a name. You are equally inconsistent, if I may respectfully say so.

Mr. EDWIN S. SMITH. You heard Mr. Vosler's testimony here, did you not, Mr. Klein?

Mr. KLEIN. Certainly, sir.

Mr. EDWIN S. SMITH. Mr. Vosler, what was your general feeling about the utility of this man Martin, in connection with the work that he was doing? You were aware that he was an officer of the union, were you not?

Mr. VOSLER. Yes.

634 Mr. EDWIN S. SMITH. And you expected him, as an officer of the union, to win the confidence of the men for the purposes for which you had him there; did you not?

Mr. VOSLER. He probably thought so.

Mr. EDWIN S. SMITH. Well, he would not have been of any use to you if the men had suspected that he was not a genuine union man——

Mr. VOSLER. No.

Mr. EDWIN S. SMITH. And officer; would he?

Mr. VOSLER. No, sir.

Mr. EDWIN S. SMITH. Is there anything surprising to you—or would it be surprising to you if Mr. Martin in connection with his duties there solicited members for the union?

Mr. VOSLER. I do not know whether he could be expected to do that or not, Mr. Smith.

Chairman MADDEN. Would not every union member be expected to get other members?

Mr. VOSLER. I think that would be the natural thing.

Chairman MADDEN. Yes.

Mr. VOSLER. (Continuing.) For a union member to do; but whether he did or not, I do not know.

Mr. EDWIN S. SMITH. Well, now, let us suppose this:

Let us suppose that as a part of his obligation to you, it had seemed desirable to him to carry this pretense to the point of soliciting members. If he had done that,
635 would you have objected to it?

Mr. VOSLER. Probably not.

Mr. EDWIN S. SMITH. That is all.

Mr. KLEIN. There is no testimony that he did, except as to this one instance, and I am trying to check up on the credibility of this witness, in connection with that instance.

Mr. PATTERSON. Well, now——

Chairman MADDEN. Will you make this agreement, Mr. Klein: Will you agree, or will you stipulate that you will bring Martin back to contradict this man?

Mr. KLEIN. I do not know what Mr. Martin did. I do not believe Mr. Vosler ever saw Mr. Martin.

Chairman MADDEN. What is that?

Mr. KLEIN. I do not think Mr. Vosler ever saw Mr. Martin. I think he got the reports from the agency.

Chairman MADDEN. And that has what to do with this?

Mr. KLEIN. Well, I do not know how we can bring Martin in.

Mr. PATTERSON. He was your employee for a year and a half.

Mr. KLEIN. Well——

Chairman MADDEN. Mr. Klein, it seems to me that the Pinkerton Detective Agency, with which you were dealing, could get hold of Martin and produce him here. Certainly he seems to be the most important person who has been testified about.

Mr. KLEIN. I do not think he is; I do not think he
636 has anything to do with it.

Mr. VOSLER. No.

Chairman MADDEN. Let Mr. Vosler say.

Mr. VOSLER. No.

Chairman MADDEN. Have you asked them?

Mr. VOSLER. No.

637 Chairman MADDEN. You have not? And you don't propose to ask them, do you?

Mr. KLEIN. There is the Government, and there is the Board. No.

Mr. PATTERSON. He is not our employee.

Mr. KLEIN. No, but you can subpoena witnesses. You have subpoenaed others.

Mr. PATTERSON. He would be a fine one to call on direct examination, wouldn't he?

Mr. KLEIN. That is up to you. It is your complaint.

Mr. PATTERSON. You have got a lot of things to deny through Martin's testimony. We will wait until you call him.

Chairman MADDEN. Do you really want to put yourself in the position here of insisting on the name of this man?

Mr. KLEIN. At the present time I would like to see the application. If the name can be covered, okay, so long as we can see the application with Martin's signature on it.

Chairman MADDEN. Do you have that application?

The WITNESS. I couldn't say truthfully whether the applications were handed from one secretary to the other or not, in the transfer of secretaries.

Chairman MADDEN. Well, could you ascertain that during the noon recess?

The WITNESS. I believe I could. I could ask the present secretary whether he has them or not.

638 Chairman MADDEN. I wish you would do that.

Mr. PATTERSON. Before Mr. Klein continues on this cross-examination, I should like to say in view of the attitude that this company has taken respecting the disclosure of this union man who is still working at the plant that the best way in the world to test the credibility of this witness is to bring their witness Martin in here to deny the statements which Mr. Hillman has testified to.

Chairman MADDEN. It is perfectly obvious——

Mr. KLEIN. It is perfectly obvious that if he has an application it will be produced. We don't care about the man but we want to see the application.

Chairman MADDEN. You don't purport to know about these union applications? I have seen a great many of them. They are very casual sort of affairs. They are signed up in the shop in lead pencil. And these people don't have filing systems or that sort of thing, and it would not prove anything if you did produce it.

Mr. KLEIN. Of their union members?

Chairman MADDEN. If they make up a list they know who their members are, but do you suppose they preserve all their applications?

Mr. KLEIN. I certainly do.

Chairman MADDEN. You speak from long experience?

Mr. KLEIN. Mr. Hillman does not say that he does not.

639 Mr. CARMODY. They may have a bale or two.

Mr. KLEIN. Absolutely. [Laughter.]

Mr. KLEIN. And I wish to except to the laughter in the room which the Board has from time to time allowed to go on all through this hearing.

Mr. PATTERSON. In which we join.

Mr. KLEIN. I would like to note an exception to that.

Mr. PATTERSON. I would like to ask Mr. KLEIN, through the chairman, whether or not he is acquainted with the sig-

nature of Mr. Martin, so that if we do bring in a card we can have somebody verify his signature?

Mr. KLEIN. We can check that signature up.

Chairman MADDEN. Mr. Vosler, are you familiar with the signature of Mr. Martin?

Mr. VOSLER. No.

Mr. KLEIN. But that signature can be checked up if it is produced?

Mr. EDWIN S. SMITH. When these reports came to you were they signed by Mr. Martin?

Mr. VOSLER. No, sir.

Mr. EDWIN S. SMITH. Did they come direct from Martin to you?

Mr. VOSLER. No, sir.

Mr. EDWIN S. SMITH. He reported to the agency

640 and the agency sent the reports to you?

Mr. VOSLER. That is right.

Mr. PATTERSON. Might I ask, Mr. Smith, that you inquire of Mr. Vosler whether these reports were signed by an operative's number?

Mr. EDWIN. S. SMITH. Were they so signed? You heard that question?

Mr. VOSLER. Yes; they were

Mr. EDWIN S. SMITH. And that was Martin's number?

Mr. VOSLER. That was his official number.

Mr. PATTERSON. Maybe he signed this union application card with his operative number.

Mr. CARMODY. Let us go on. Where do we stand on this witness?

Mr. KLEIN. I have asked for the card, sir, but I don't know what the Board's ruling on it is, but I have stated my position.

Mr. CARMODY. I think the chairman asked the witness to endeavor to get the card at noon.

Chairman MADDEN. You are aware of that. The card cannot be produced at this moment.

Mr. KLEIN. Let us find out where the card is.

Q. (By Mr. KLEIN.) Do you know who has the cards for union members; who has the cards?

A. The recording secretary.

641 Q. Who has the cards?

A. Mr. Beck.

Mr. KLEIN. Is Mr. Beck here?

Mr. BECK. Yes.

Mr. KLEIN. Where are these cards, Mr. Beck?

Mr. BECK. I could not tell you about a complete list of the application cards. I have a few at home.

Mr. KLEIN. You just have a few? What did you do with these applications when you got them?

Mr. BECK. I have accepted no applications since I have been recording secretary.

Mr. KLEIN. Well, didn't you have a complete list of applications when you did become recording secretary?

Mr. BECK. No; the only list of applications I had was the book of the members.

Mr. KLEIN. And you have no application blanks with the members' signatures?

Mr. BECK. I would say I only had a few application blanks with the members' signatures.

Mr. KLEIN. You have no application with Martin's name on it, have you; I mean with Martin witnessing another's signature?

Mr. BECK. I think I can find an application to that effect.

Mr. KLEIN. You think so?

Mr. BECK. I would not make the declaration, but
642 I think I can find one application.

Mr. KLEIN. We would like to see it. I would, anyway.

Chairman MADDEN. The board would be much enlightened. Is it really so that you are just doing this to test his credibility?

Mr. KLEIN. That is the purpose; yes, sir.

Q. (By Mr. KLEIN.) Now, when the foremen walk around the factory, when they do, of course they generally have lists in their hands during working hours, don't they, checking up on various jobs?

A. Sometimes they do.

Q. And those lists have job numbers on them, don't they?

A. Yes, sir.

Q. And it might have been that this list you are talking about was a list of job numbers?

A. Hardly.

Q. You did not look over his shoulder and see what he had?

A. I stood where I could see it.

Q. You just looked over his shoulder?

A. No. He just held it out this way and Martin was——

Q. You would not say it was not a job number he was checking over on some work going through?

A. It is hardly possible, because the badge numbers are not in the same denomination all the way through.

Q. You wouldn't say it was not, would you?

A. No; I wouldn't say it was not. Anything could be possible.

643 Mr. KLEIN. That is all.

Mr. PATTERSON. That is all.

Q. (By Mr. CARMODY.) I notice you have a pin on there. Is that an American Legion pin?

A. No, sir.
Q. What is that?
A. That is a veteran's button.
Q. What do you mean by veterans' button?
A. It is a discharge button from the service.
Q. You are an ex-service man?
A. Yes, sir.
Q. You served your country during the war?
A. Yes, sir.
Q. In what capacity?
A. As an ordnance man.
Q. Where were you?
A. In the United States, France, Germany, Luxembourg, and Belgium.
Q. For the United States Army?
A. Yes, sir.
Q. When did you come back to Detroit?
A. Well, I had enlisted in Peoria, Illinois.
Q. When did you come to Detroit?
A. In 1929.
Q. When did you first go to work for this company?
644 A. In 1929. In January 1929.
Q. So you worked for them more than once?
A. Yes, sir.
Q. What is your trade?
A. Machinist.
Q. Did you serve an apprenticeship?
A. No, sir. Well, I started—I did serve an apprenticeship in a way.
Q. You did not go through the regular apprenticeship but you served so many years, is that true, in machine shops?
A. Yes, sir; I started as a trucker and I went on three or four different machines up to a milling machine.
Q. That was not at Holts', in Peoria?
A. Yes, sir.
Q. The largest machine shop there?
A. Yes. And I gave up my job when I joined the Army and they wrote me to come back as soon as I was discharged.
Q. (By Mr. Kraus.) From the Fruehauf Company?
A. No, sir. I wouldn't expect the Fruehauf to do that.
Q. How long did you work for them?
A. Since 1929.
Q. There are a lot of good workmen there?
A. Yes.
Q. There are a lot of good workmen there just as good as you are?
645 A. Absolutely.

Q. And there may be some better?
A. Absolutely, there may be some better.
Mr. KLEIN. Of course. That is all.

Re-direct examination:

Q. (By Mr. PATTERSON.) And there were some worse?
A. Absolutely.
Mr. PATTERSON. That is all.
Chairman MADDEN. Recess for five minutes.
(Whereupon a short recess was taken, after which the following proceedings were had:)
Mr. PATTERSON. Were you finished with Mr. Hillman, Mr. Klein?
Mr. KLEIN. Pardon me?
Mr. PATTERSON. Have you finished with Mr. Hillman?
Mr. KLEIN. Yes. Yes.
(Witness excused.)
Mr. PATTERSON. Mr. Sprytzer. Were you sworn yesterday?
Mr. SPRYTZER. Yes, sir.
Mr. PATTERSON. All right; take the chair.
Mr. SPRYTZER. Oh, no, I wasn't sworn.
Mr. PATTERSON. You were not sworn?
Mr. SPRYTZER. No, sir.
Chairman MADDEN. Raise your right hand.

646 STEPHEN SPRYTZER, called as a witness on behalf of the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name?
A. Stephen Sprytzer.
Q. And where do you live, Mr. Sprytzer?
A. 8298 Market.
Q. Are you now employed?
A. Yes, sir.
Q. And for how long have you been employed since your discharge at Fruehauf's?
A. Well, since the second of July I lost about two or three weeks at the most.
Q. And how much are you making now compared to what you made at Fruehauf?
A. Well, the first job I had I made considerable less and this job I have now I made 9¢ an hour more.
Q. When were you hired by the Fruehauf Trailer Company?
A. Well, it is six and a half years ago; about six and a half or seven. I don't know just exactly.

Q. And when were you discharged, Steve?
A. The second of July.
Q. 1935?
A. Right.
647 Q. At what time of day were you discharged?
A. 8:30 in the morning.
Q. What office, if any, did you hold in the union?
A. I was president of that local.
Q. And for how long had you been president of the local?
A. Since the local began.
Q. And when was that?
A. That was—well, the local ran about two years. That would be in 1933 or the early part of 1934.
Q. Did you know the missing link, Martin?
A. Yes, sir.
Q. When did he join the union?
Chairman MADDEN. Just a moment, I wish you would define for the purposes of the record, I mean, describe more accurately the Mr. Martin you are referring to, so that he may be identified with the person in question.
Q. (By Mr. PATTERSON.) The Mr. Martin to which reference is made is the same Mr. Martin that Mr. Vosler testified to here?
A. Yes, sir.
Q. Mr. Martin was a member of the union, wasn't he?
A. Yes, sir.
Q. When did he become a member of the union?
A. I don't know right offhand. It is in the books, but I imagine he was there about a year or——
Q. You mean he was a member of the union for a
648 year up to the time you were discharged or up to now?
A. Up to the time I was discharged, about a year or over.
Q. So he joined the union in July of last year?
A. I presume it would be somewhere around that.
Q. Now, do you remember when Mr. Martin first came in the plant, when he was hired?
A. Well, I just have some idea in general, you know, just in my mind that I saw him around there, but I don't know exactly the date.
Q. Well, did he join the union shortly after he became employed at the Fruehauf plant?
A. Oh, immediately.
Q. Can you tell the board, Mr. Sprytzer, anything about Martin's activities, as to what he said about union organization, along that line?
A. Well, as far as I can see, Martin seemed to be a queer man of some kind or other. He was always reciting poetry

or saying something like, "You can catch more flies with molasses than you can with vinegar", and so on. And once in a while he would ask about the union, how the membership is, and if the boys was all good stickers and asking about certain people, if I thought they would be all right, but I do not recall—I just memorized him saying that.

Q. Well, after he joined the union he was probably the best attendant you had at union meetings, was he not?

649 A. He never missed a meeting.

Q. He never missed a meeting. Did he always take an active part at the union meetings?

A. Well, not always. He would do more reciting when we didn't have any important questions, but when an important question arose, like the strike vote we had then, he got up and bitterly protested against it.

Q. I see. Now, do you remember, Steve, when Martin became treasurer of your union?

A. I remember, but I don't know the date.

Q. Well, could you estimate about when it was, the first of this year or before the first of this year, or after?

A. I imagine he was about a year.

Q. Well, then, did he become treasurer of the union shortly after he became a member of the union?

A. That is right.

Q. Now, you were discharged, you say, the first or second of July?

A. The 2nd of July.

Q. I will ask you, Mr. Sprytzer, whether or not you ever talked to a foreman about union activities prior to the time when you were discharged?

A. To the foreman?

Q. Did you either talk to the foreman or did the foreman talk to you about union affiliation or activity?

650 A. No, sir; I didn't have to talk that. He knew that.

Q. I see. He knew that you were president of the union. And who was your foreman?

A. Landis Goodell?

Q. Mr. Goodell?

Mr. EDWIN S. SMITH. May I interrupt you to ask how the witness knew that the foreman knew he was president of the union.

The WITNESS. Because there were times arose when there would be work, or something like that—we would be working and he would come around and he would say, "Steve", he would say, "We want to have no talk about union around here. You know, you do not want to select any members around here." I was told that they did not want any

selecting of members during working hours, and that is as close as I could come to it. Everybody in the factory knew it. I don't see how they would know it.

Mr. PATTERSON. I believe I can develop that for you, Mr. Smith.

Q. (By Mr. PATTERSON.) Along in March of 1935, Mr. Sprytzer, did you have occasion to talk to the foreman about a raise?

A. Why, yes. They had a little booklet out there. They started to put that booklet in when Mr. Halpin came there.

Q. That is, inside stuff?

A. Inside stuff, yes. And in this booklet it says
651 that anyone that couldn't get any satisfaction out of their foreman to go and talk to the superintendent or someone above the foreman's head.

Q. Yes. And after seeing that in the booklet, what did you do?

A. Well, I asked Mr. Goodell for a raise about three times and got no results. So one morning I told Mr. Goodell I was going in to see Mr. Halpin. "Why", he says, "That is just fine."

Q. How did he act when you told him you were going in to see Mr. Halpin?

A. He seemed to be pleased.

Q. And did you go in to see Mr. Halpin?

A. Yes, sir; I did.

Q. Mr. Halpin was the shop superintendent?

A. Right.

Q. Tell the board what your conversation with Mr. Halpin was.

A. Why, when I came into Mr. Halpin's office Mr. Halpin smiled and said, "I have been looking forward to seeing you." "Why?" I said, "I have been in the shop all the time." He says, "Yes, but you know that I wouldn't go into the shop and talk to you."

Q. He said he wanted to see you?

A. He said he wanted to see me.

652 Q. All right.

A. So he told me to sit down. I sat down across the table from him and he wanted to know what I was there for, and I told him I was there for a raise. I told him I asked the foreman for a raise about three times, and that the foreman would not give me the raise, and I thought I would go and see him according to that instructions stuff in the booklet, and he told me to sit down and just forget about that. And so I sat down, and he said, "How old are you, Steve?" And I told him.

Q. How old are you, Steve?

A. Thirty-two.

Q. All right.

A. I will be 32, rather.

Q. All right.

A. And he asked me if I was married, and I told him I was. He asked me how many children I had and I told him one. Now, he said, "Look here, Steve. You know this company can do more for you than what you are doing right now in the union." He says, "Don't you think that—do you think that this union is doing you any good?" I said, "Well, it must be." He says, "How?" I says, "I can get in to talk to my superiors here now where I couldn't even get near the front door before." So when that happened he says, "Now, Steve, this company can do more for you than this union." He says, "How would you like to go along with us, with
653 me?" "Why", I says, "I don't know, Mr. Halpin." He says, "How would you like to play ball with me?" I says, "All right. I thought this was going to be a two-sided ball game." "That is fine", he says, "Anything to get along." Then we talked about different things, and he just told me those things about the company would do more for me, and all that, and I think at that time we departed, if I recall. I did not get in my statement just the way I wanted to get all those things in, and if my memory gets refreshed I can tell other things that took place at that time, probably.

Q. Did he say anything to you at that time about looking out for the other fellow?

A. Oh, yes; he told me not to look out for the other fellow; I should look out for myself.

Q. About when was that conversation?

A. Well, as I recall, that conversation was——

Q. Was it about March of this year?

A. Somewhere around there, I think. It was just after the inside stuff came out there, that booklet.

Q. Now, let me ask you: Did you have occasion to talk to Mr. Halpin again prior to the time that you were discharged?

A. Yes; I did.

Q. And what was the occasion for that?

A. Well, the occasion was, they fired one of our union men on the job that I worked with—I worked on this particular job when he was fired this day, and I saw no
654 reason for him being discharged, so I went in to see the foreman at noon and I told him, "can't this be fixed up for this man to be put back to work, because I don't think he was fired justly and I don't like to see this go before the board?" And I told him, "To keep peace in the family, if this can be fixed up we don't have to go before

the board again." He says, "I can't help it. It is already done."

Q. Who was that employee?

A. Frank Lemarand. So that evening when I was going home I had a notion to stop at Mr. Halpin's office all the time and somehow I didn't. I thought it wasn't right because the union members would say I was going in there for some other reason, probably, than business or the good of the union. So as I was going out the door and got on the sidewalk and looked back it seemed to me that Mr. Halpin was watching my steps. Well, I got about three-quarters of the way home—I live about a mile from the Fruehauf plant—and suddenly I changed my mind and turned around and said I was going to see him. I went in, and Mr. Halpin asked me to sit down. I told him what I was there for. I told him I thought Frank Lemarand was fired unjustly and if we could not fix up the difference so that we would not have to appear in court—or, before the board, rather. "Well, now," he says, "That is mostly the company's business, and in the first place," he said, "I thought you and I was going to play ball."

655 Q. Mr. Halpin said that?

A. Yes, sir. But I said, "Well, Mr. Halpin, I thought this was going to be a two-sided ball game." "Oh, no," he said, "You know what I meant." I said, "No, sir; I did not." So at that point he thought that him and I could not agree on anything any more, and there was no more to be said, and he could not get along with me, and he said, "Furthermore, we will attend to the company's affairs as far as firing and hiring."

Q. Did that end the conversation?

A. And I got up. No. When he said to me, "I thought you were going to play ball with me", I said, "I thought it was going to be a two-sided ball game. There is about five hundred men back there in the plant, and I would not turn on them."

Q. Now, then, Steve, you were discharged on July 2nd?

A. Right.

Q. About 8:30 o'clock in the morning?

A. Correct.

Q. When did you start work on that morning?

A. 8:00.

Q. You had been in a half hour and then you were discharged?

A. Yes.

Q. Who discharged you?

A. Mr. Goodell.

Q. What did he say to you when he discharged you?

A. Well, he did not have much of anything to say.
656 He appeared kind of nervous. I saw him standing around. They could not seem to find a place for me to go to work that morning. I guess they already had the plan set, and the sub-foreman there who generally handed out the work, he said, "Well, I don't know what you are going to do this morning. You had better see Mr. Goodell." And, naturally, I walked up to Mr. Goodell to ask him what I was going to do, because, naturally, they want you to work there from the minute you are there—they do not want you to stand around—and he told me to go on a certain job and help out for a while, and I wasn't on that job more than twenty or twenty-five minutes when he came up and started talking and said, "I am sorry I have to lay you off."

Q. What did you say to him?

A. Well, I said, "If you have to lay me off, that is all right." I said, "Have you got my time slip?" he said, "No. Come right up over here to the office", and it seemed to me he wanted to rush me in the office in a hurry so there would not be any great commotion around there, and we got in the office, and this man did not happen to be a timekeeper—the timekeeper was out. He was taking his place. He was a time study man there.

Q. A time study man?

A. Yes, I guess that is what he was. I can't see no other. He was taking a time study for a piece work plan. So this time study man started making out my time slip, and he asked Mr. Goodel what he wanted to put on my time
657 slip, and Mr. Goodel said, "Non-cooperation with men."

Q. Non-cooperation with men. What was the fact as to whether the timekeeper and Mr. Goodel had a little talk before they decided what they were going to put on your time slip?

A. How is that?

Q. Did they have a conversation together before Mr. Goodel said, "Put on, 'non-cooperation with men'"?

A. Well, no. He asked what he wanted to put on there and Mr. Goodel hesitated for two or three minutes on it probably and then told him to put down, "Non-cooperation with men."

Q. You have been in the plant six and one-half years?

A. Around there. Six and a half or seven.

Q. And you had been president of this union for a year and a half?

A. Right.

Q. Did anybody ever criticize you for not doing the job you were given to do in that plant?

A. Never.

Q. What department were you in?

A. Frame.

Q. How many men were in the frame department, approximately?

A. Well, that department, when I was there, generally ran from 28 to 35 men.

Q. Yes. And how many of those 28 to 35 men were there longer than you were.

658 A. Well, I don't know exactly, but in my line, outside of lay out men, there were probably three or four.

Q. In other words, there were not more than three or four men in that department who——

A. Well, probably five or six.

Q. Or five men?

A. No more than six, though.

Q. Well, the great majority of the men in that department had not been working with the Fruehauf Company nearly as long as you had?

A. No, sir.

Q. Now, had Mr. Goodel ever said anything to you about non-cooperation with men?

A. Never.

Q. What is the fact, Mr. Sprytzer, as to whether he said something to you about two fellows that appeared before the labor board to testify as witnesses against the union?

A. Well, there was only—at one time there was something mentioned about that, and that was right after the hearing.

Q. Who was it that mentioned it?

A. Mr. Goodel.

Q. All right. What did he say?

A. He says, despite your affiliation, or anything else, or what happened at the board down there, that we should work harmoniously.

659 Q. Well, had you ever done anything which interfered with the performance of the job that you had to do?

A. No, sir.

Q. If it was necessary to talk to these two fellows who had testified against the union in connection with the work, would you talk to them?

A. Only what I had to say, and that was the policy of the company, not to talk but work.

Q. I see. Did you ever have any conversation with either Mr. Goodel or Mr. Halpin after you were discharged on the 2nd of July?

A. Not after I was discharged.

Q. Steve, is it a fact that you were fired by this company in 1934?

A. Right.

Q. When was that?

A. That was the very first night that we started to organize this union—the next morning, rather.

Q. The next morning after you started organizing you got fired?

A. Absolutely.

Q. How long were you off work?

A. I don't recall if it was one day or so, or more. I don't know. But it was, I think, around a day or so.

Q. And who was superintendent then?

A. Mr. Snyder.

660 Q. Mr. Snyder. And how did it happen, Steve, that you got back to work?

A. Well, when I got fired I went home and I went down to the American Federation of Labor office in the Hoffman Building here on Woodward Avenue, and I came in contact with Mr. McDonald there, and Mr. McDonald started to inquire a little bit, asking me different questions about how many hours I worked and all different things, and he called up the company, and I guess it was that night or the next night I had a letter at midnight come to me to come back and see Mr. Snyder.

Q. So you got back to work after Mr. McDonald had intervened with Mr. Snyder?

A. Mr. ———, Oh, yes.

Q. Mr. Snyder. Is that right?

A. Right.

Q. Now, Steve, within a few weeks prior to your discharge, did the company hire any new men in your department?

A. Well, I wouldn't say in a few weeks. I would say up to about six weeks.

Q. Within six weeks prior to your discharge?

A. Right around that.

Q. How many men would you say the company hired in your department within six weeks prior to your discharge?

A. Possibly four or five.

Q. Did you learn where those men were from?

661 A. Why they were all from River Rouge, from the shipyards, so I understand.

Q. Was anybody else laid off in your department the day you were?

A. No, sir.

Q. Was there anybody laid off in your department within two or three days before you were laid off?

A. No, sir.

Q. So that even though there were only five or six men in that department older than you, you were discharged in that department before anybody else was?

A. Right.

Mr. PATTERSON. That is all.

Cross-examination:

Q. (By Mr. KLEIN.) Mr. Sprytzer——

Chairman MADDEN. Just a minute.

Mr. KLEIN. I am sorry.

Chairman MADDEN. No. Go ahead. I thought the witness was leaving the stand.

Mr. KLEIN. Oh.

Q. (By Mr. Klein.) Did you help organize this union, Mr. Sprytzer?

A. Absolutely.

Q. How did this union come to be organized; were you one of the organizers, one of the men who started it there?

662 Mr. PATTERSON. Well, I object. I don't see the materiality.

Chairman MADDEN. Objection overruled. We want to hear it.

A. The first thing I knew of it, they came out on the sidewalk one night and told me there was going to be a meeting at the Northern High School.

Q. (By Mr. Klein.) Who was that?

A. Different fellows that worked in the shop.

Q. At the Northern High School?

A. No, not the Northern High School. I guess it was the Southeastern, I think it is.

Q. And did they tell you what was going to go on at that meeting?

A. They did not tell me what was going to go on, but they told me it was for the purpose of organization.

Q. When was that, around July of 1934?

A. No, it was earlier than that.

Q. June?

A. I remember that yet. I think our local started in sometime in May.

Q. May 1934? Well, it was around that time?

A. Yes, it was early in the spring.

Q. Early in the spring. And you went to that meeting, did you?

A. Yes, sir.

663 Q. About how many men were at that meeting?

A. Well, there were employees from another company there. I do not recall who they were, and the employ-

ees from our company, there were probably one hundred and fifty or two hundred men.

Q. How many from your company?

A. Two hundred men.

Q. From your company?

A. From our company. Two hundred men, around that.

Q. You would not say there were thirty-five, like one of the other witnesses testified?

Mr. PATTERSON. I object. He did not say anything of the kind.

Mr. KLEIN. You are putting words in the witness' mouth.

Chairman MADDEN. Just a moment. I do not recall any witness testifying to that. You may ask him.

Mr. KLEIN. I understood the first witness——

Chairman MADDEN. Just ask him the question.

Mr. KLEIN. I will, sir.

Q. (By Mr. KLEIN.) Would you say there were more than thirty-five men there from your company?

A. Absolutely.

Q. Who else was there; men from another company?

A. Yes, sir.

Q. That had nothing to do with the Fruehauf Trailer Company?

A. They were there also for the same purpose.

664 Q. But the men from the Fruehauf Trailer Company had no direct connection with these men?

A. No, sir.

Q. They worked in a different factory?

A. Yes.

Q. And was Mr. McDonald there from the American Federation of Labor?

A. No.

Q. Was there someone there from the American Federation of Labor?

A. Hugh Thompson.

Q. And did he preside over the meeting?

A. Yes, sir.

Q. And what did he have to say to this meeting?

A. Well, you know the general line of an organizer.

Q. Well, tell the Board here. Maybe they don't know.

A. Well, all he had to say was that—to organize. That wasn't all he said, but that "through organization you will be able to help yourselves and better your conditions", and so on. You know what.

Q. He did not tell you you could get a strike together by getting a group, and all that, did he?

A. They don't advocate that.

Q. They don't advocate that. Well, what happened at that meeting? Did they organize a local then?

665 A. Yes, sir.

Q. How many men joined that local at that time, or around that time?

A. I couldn't say.

Q. Would you say that thirty-five was the first group that joined?

A. More than that, I think.

Q. Was it forty?

A. Well, around that.

Q. Around 40 members of the Fruehauf plant?

A. Yes.

Q. And you organized a separate union or local just for Fruehauf employees?

A. Right.

Q. And then did an organizer come to the next meeting that you had of this local?

A. Yes, sir.

Q. And what was discussed at that meeting?

A. The same thing.

Q. And did that organizer urge you to get more members?

A. He did not have to urge us. We wanted to get them ourselves.

Q. But did he urge you to do so?

A. Yes, he did, but he said he was there for the purpose of explaining the thing, how it is supposed to be

666 done, and how to go about it.

Q. Who was the man at that meeting?

A. Mr. McDonald.

Q. He is a very good speaker; isn't he?

A. Fine.

Q. He talked with great vigor and effectiveness, doesn't he?

A. About as good as there is in the country.

Q. He tried to stir all the members up to come into this union?

A. He did not try to stir them up. He said it would be of our own free will.

Q. Well, he said he thought it would be a good thing and he told you so?

A. He did not tell me that.

Q. He told the meeting?

A. Yes.

Q. You don't mean to say that he did not urge you to build up a strong organization?

A. He did.

Q. And the men went out and got new members?

A. Yes.

Q. And you were very active in getting new members?

A. Right.

Q. When did they hold the election of the first officers?

A. I don't remember whether it was the second or third meeting.

Q. And you were elected president or chairman of
667 the local at that meeting?

A. Right.

Q. What was the largest membership you ever had of that union?

A. I don't know whether I have to answer that.

Mr. KLEIN. I think you do.

Chairman MADDEN. I think that is a fair question.

A. (Continuing.) To tell the truth, I don't know.

Q. (By Mr. KLEIN.) Did you have one hundred members?

A. Over, I think.

Q. Did you have one hundred and twenty members?

A. I would say——

Q. Just about 120 members?

Mr. PATTERSON. Now, wait a minute.

A. (Continuing.) More than that.

Q. (By Mr. KLEIN.) 140 members?

A. I don't know the exact number.

Q. Well, was it less than 150?

A. You see, the recording secretary never let us get into his books, not even myself.

Q. Weren't you president of that local?

A. I was.

Q. Weren't you interested in knowing how members you had?

A. Yes, sir; I was.

Q. Didn't you inquire?

A. I did not, for one reason.

668 Q. What was the reason?

A. The reason was we had stool pigeons around there and in our local we put it in a motion on the floor that anybody we did not give the membership or treasurer's report to anybody, but anybody that wanted to know it could come up in person and get it.

Q. Who made that rule?

A. The recording secretary.

Q. If anybody had a right to know the membership, the president had the right?

A. He didn't know.

Q. Why?

A. We did not inquire.

Q. You did not know how many members you had? Weren't you interested in soliciting members?

A. I was.

Q. Didn't you want to build up the local?

A. I did.

Q. Didn't you tell the meeting you did not have enough members and you wanted more?

A. Yes.

Q. Didn't you tell the meeting how many members you had?

A. No, sir.

Q. And Mr. McDonald didn't want you to get members?

A. He did.

669 Q. He was very active in wanting you to get members?

A. He was.

Q. How much money does your local pay into the American Federation of Labor in dues every month?

Mr. PATTERSON. I object to that.

Mr. KLEIN. I think it is competent.

Chairman MADDEN. What is the relevancy?

Mr. KLEIN. To show that we had outside men agitating the organization of a local in the plant in Detroit; that Mr. McDonald did not work in the plant and that there was stirred up by an outsider a movement to get members in the plant; and that the American Federation of Labor received a certain amount from each member that joined. I am not questioning the motives, but I want the fact to be shown that an outside man came in here and stirred this thing up.

Mr. PATTERSON. Whose identity was not concealed.

Mr. KLEIN. No; he is very well known, Mr. McDonald.

Chairman MADDEN. Is it your contention that there is something illegal about that?

Mr. KLEIN. No; but I think we are entitled to have the facts in the record. It is illegal in our plant if there is agitation in our plant during working hours, and illegal if an employer can say properly that it interferes with his work.

Chairman MADDEN. In what sense are you using the word "illegal"? In the sense of a rule of the Fruehauf

670 Company or the law of the land?

Mr. KLEIN. It is the law of the land that an employer can employ whoever he thinks will benefit his company, and if he thinks a man is agitating others to join a union on the premises or during working hours, or if he thinks that such an employee is one who has not the interest of the company at heart, he has the right legally to discharge, and in that sense I use the world "lawfully."

Chairman MADDEN. And the question of how much the local paid the American Federation has what to do with that?

Mr. KLEIN. It shows how interested a man not in the Fruehauf plant might be in getting men in the Fruehauf plant to join the union which pays dues that go to that outside organization or to himself.

Chairman MADDEN. And that again proves——

Mr. KLEIN. The amount of agitation that might have gone on in the plant and what its source was.

Chairman MADDEN. Have you evidence as to the amount of agitation in the plant?

Mr. KLEIN. I am trying to develop it and I am leading up to it.

Chairman MADDEN. You develop that first.

Mr. KLEIN. I would like to ask the question and I would like the ruling of the board on it.

Chairman MADDEN. The ruling is this, that at this
671 moment there is no relevancy and the objection is sustained for the time being. Now, if you can show a basis, that will make this relevant, it may be admitted.

Mr. KLEIN. I think, Mr. Chairman, as I say, the amount of agitation that was going on in the plant, which this man admitted—that he was trying to get members and he was stirring up others to get members—the place they got members was among the employees in the plant and at the plant——

The WITNESS. Not in the plant.

Mr. KLEIN. We will develop that.

Chairman MADDEN. We sustain the objection.

Mr. KLEIN. I take it there is no ruling for the moment?

Mr. PATTERSON. Oh, yes; there is.

Chairman MADDEN. Let the record show that you are developing a basis of relevancy for this testimony.

Mr. KLEIN. All right.

Q. (By Mr. KLEIN.) Did you continue trying to get members at that meeting?

A. Very much.

Q. And did Mr. McDonald come to other meetings?

A. Yes, sir.

Q. And at each meeting did he urge the members to get other members at the plant?

A. Not at each meeting.

Q. At most meetings?

679 A. At some.

Q. At some meetings?

Chairman MADDEN. Now, when you say, "at the plant", will you explain what you mean?

Mr. KLEIN. I will strike "at the plant."

Q. (By Mr. KLEIN.) Did he urge you to get more members?

A. He did.

Mr. KLEIN. I am not trying to lead the witness in those statements.

Chairman MADDEN. I don't want you to mislead him.

Mr. KLEIN. I am not going to, sir.

Q. (By Mr. KLEIN.) Where did you solicit members?

A. Outside the plant.

Q. At their homes?

A. Immediately we were through work, on the sidewalk.

Q. You never did it on the premises?

A. No, I followed the company's rule.

Q. You never did it?

A. I never did.

Q. If someone were to testify that you did, would you say that was incorrect?

A. I would.

Q. Did any of the other members solicit during working hours?

Mr. PATTERSON. If he knows.

A. I don't know. I did not follow the members
673 around the plant all day.

Q. (By Mr. KLEIN.) And isn't it a fact that the foreman talked to you about soliciting members during working hours—Mr. Goodel?

A. He said the policy of the company was not to solicit union members or discuss unionism during working hours.

Q. And isn't it a fact that he told you that because you had been soliciting members during working hours?

A. It is not a fact.

Q. He just, out of a clear sky, came and told you that?

A. He said those were the orders of the executives.

Q. You know, as a matter of fact, he heard you soliciting a member and he wanted you to stop and warned you about it?

A. He did not.

Q. And isn't it a fact that you persisted in soliciting members during working hours around the premises?

A. I did not.

Q. And isn't it a fact that that was what Mr. Halpin talked to you about when you were in his office?

A. He told me also that he wanted the general understanding that there would be no soliciting of members around the shop, and I told him that was taken care of at the regular meeting and I warned the members not to select members in the plant during working hours.

Q. He complained to you about its going on?

674 A. He did not.

Q. He told you to stop it?

A. He did not say, "Stop it."

Q. If it had not been going on he would not have told you?

A. No.

Q. You know very well that isn't so?

Mr. PATTERSON. Wait a minute. You are saying something the witness did not say.

Mr. KLEIN. He understands.

Mr. PATTERSON. You have got about nineteen questions rolled up into one.

Q. (By Mr. KLEIN.) Is there any time when you worked at Fruehauf's when your foreman refused to talk to you about your employment?

A. How is that?

Q. Had your foreman always talked to you about your work when you wanted to talk to him about your work there?

A. About work?

Q. I mean, at any time you felt you wanted to talk to him about something, did he refuse to talk to you about it?

A. No. Not if there was something important, but if it was something little, he would probably tell me to go and see someone else about it.

Q. You worked there for 7 years, didn't you?

A. Around that.

675 Q. And not once during that time did a foreman refuse to discuss what you wanted to talk to him about?

A. Oh, yes; he would not discuss wages.

Q. You asked him to get your pay raised and he told you yes or no?

A. He told me he would see.

Q. You got some pay raises, didn't you?

A. Not through the foreman.

Q. I am asking you whether you got some pay raises?

A. I did.

Q. You got them, didn't you?

A. I did.

Q. (By Chairman MADDEN.) Were these the general raises put into effect throughout the plant, at the time you got your pay raises?

A. In particular this last pay raise was—I don't know. At that time, when they put this booklet out, a lot of employees took advantage of it and they did see the foreman, and the foreman would give them raises, and those they did not give raises would go down and see the superintendent, the same as I did, and got them down there, I suppose. There wasn't an official raise. It was just everybody

talked for himself and there were quite a few raises going on at that time.

Q. (By Mr. KLEIN.) The superintendent never talked to you, did he?

676 A. No; he did not. He was glad to see me.

Q. You don't criticize the company's rule which says—

If you don't get satisfaction out of your foreman, come in and see the superintendent.

You don't criticize that company rule?

A. That is the first time I saw that after 7 years.

Q. But they never refused you before, did they?

A. No.

Q. So, what difference does it make? You always had that opportunity?

A. I don't know.

Q. You said you had; as I understood?

A. I don't know that I always had it.

Q. Well, they never refused to talk to you, so you don't know otherwise. Now, Mr. Goodel talked to you, I understand, about working harmoniously. You don't criticize him for that, do you?

A. No.

Q. He talked to you about that at the same time he talked to you about the rule of not soliciting members during working hours around the premises?

A. I do not recall.

Q. You would not say it wasn't?

A. I would not say it wasn't, but I do not recall.

Q. And isn't it a fact that he said that when you solicited members on the premises during working hours, that

677 it created hard feeling, that when a fellow does not want to join and you want to urge it, it would create disharmony?

A. He did not say any such thing.

Q. He was talking about harmony, wasn't he?

A. Yes.

Q. And he was talking about not soliciting members during working hours or on the premises?

A. Right.

Q. About this strike vote, did that take place after you lost your job there?

A. Yes.

Q. The next day?

A. Yes.

Q. Who called the meeting for them?

A. The officers. We had a regular meeting, and after the regular meeting we decided to hold a special meeting the following week.

Q. You were not discharged a week before you called this strike vote; you were discharged on July 2nd, I understood you to say?

A. Yes.

Q. And the meeting was called the 3rd, the strike meeting?

A. No.

Q. When was that called?

A. About a week later, from my memory. I ain't sure.

678 Q. I understood from one of the witnesses who testified yesterday, who lost his job on the 6th, that they had the strike meeting before, and when he came back he heard about the strike meeting.

Chairman MADDEN. Mr. Beck.

Q. (By Mr. KLEIN.) (Continuing.) Mr. Beck so testified. So your understanding was you had the strike meeting a week or ten days after you lost your job?

Mr. CARMODY. He did not say "ten days."

Q. (By Mr. Klein.) How many days after?

A. We will say within about a week.

Q. And did you preside at that meeting?

A. Yes, sir.

Q. And did you urge the members to strike?

A. No, sir.

Q. What did you propose?

A. I did not propose anything. It was up to the members.

Q. Who suggested the strike?

A. I don't know.

Q. Well, who suggested the proposal?

A. By "proposal" what do you mean?

Q. Who suggested that you lost your job and "by gosh, we are going to strike about it"?

A. I don't know.

Q. You were not interested in that?

679 A. No.

Q. Weren't you interested in who proposed to get your job back for you?

A. I was not interested in who proposed to get my job back for me. I was interested in the general situation.

Q. You would not say Mr. McDonald proposed it?

A. He did not.

Q. Wasn't there some outside person at that meeting?

A. No, sir.

Q. There were no outsiders at that meeting; you are positive of that now?

A. Not that I know of.

Q. There were no outsiders there?

A. The general rule is that there were not any admitted.
Q. I mean American Federation of Labor men?
A. Yes, there was one.
Q. Did he speak at that meeting?
A. No, sir.
Q. Who was that man?
A. I think it was Phil Gorman. I do not think he was there at the beginning. He was there at the end, because he took statements from the men who were laid off.
Q. Did Mr. McDonald come to the meeting?
A. He was there at the beginning, but whether he was there at the end I don't know.

680 Q. You took a strike vote, did you?
A. We did.

Q. You men did not go to the company and discuss this particular discharge situation, did you?
A. No, because before, before that, we tried to get a conference with them and they would not have anything to do with us.
Q. This was before you were discharged?
A. Yes.
Q. I was talking about after you were discharged?
A. After I was discharged I did not go down there.
Q. And you did not try to get a union group to go back and talk to them and try to get your job back; yes or no?
A. No.
Q. (By Chairman MADDEN.) Will you tell us at this point about this other conference that you sought and could not get, as I understood?
A. Well, we had a bargaining agency there. I mean we bargained with the management and when we asked for a conference we could not get it, and so after the N. R. A. was discontinued, we could not get a conference. So we thought there was no use bargaining otherwise.
Q. (By Mr. KLEIN.) You did not make any attempt to?
A. No.

Q. After you lost your job?

681 A. No.

Chairman MADDEN. Mr. Vosler testified yesterday that they stopped bargaining after the abolishment of the N. R. A.

Q. (By Mr. EDWIN S. SMITH.) At the time you asked for a conference and the company would not deal with you, you went up to see the company on that occasion?
A. I think we sent them a letter and I think they would not answer. I think that is the way it was. I am not sure, because we had three or four other conferences with them and we never did make any notations or anything like that.

Q. You sent a letter asking for a conference at a certain time?

A. Yes.

Q. And you got no reply to that?

A. No reply.

Q. And you did not go around and see them in person in connection with that?

A. To tell the truth, I don't recall. It might be possible that we did. I don't recall.

Q. (By Mr. KLEIN.) You don't know, do you?

A. No.

Q. Did you make a copy of the letters that you wrote?

A. I don't know that either.

Q. You would not say you did not make a copy, would you?

A. I don't know.

682 Q. Do you know the date that you wrote this letter?

A. I don't know.

Q. You would not say it was in May of that year, two months before?

A. I don't know.

Q. How long a time before you lost your job was this letter written?

A. It was sometime before the N. R. A. was discontinued.

Q. How long before you lost your position?

A. I don't know. It was sometime before the N. R. A. was discontinued.

Q. It was discontinued in May—that decision, rather, wasn't it?

A. This meeting was called under the N. R. A. The minute the N. R. A. was called unconstitutional they would not meet us any more.

Q. This meeting was just before or after?

A. Just before.

Q. So that was about a month and a half or two months before you lost your position?

A. Yes.

Q. Yet, you were not interested enough after you lost your job to see if the employer would discuss it with you before the union called a strike?

A. I can answer that in my own way.

688 Q. I want you to.

A. After they fired me it put the fear of Christ in these men, and these men would not call a strike no more. After I got fired they would pick one out here and one out there, and we could not get a bargaining agency to go and see them.

Q. That is what you heard. You were not at the factory when this was going on?

A. I did not see it, but I know we held meetings after that, and these men would come up there, and they were fired.

Q. And you had a strike vote?

A. Yes.

Q. And the union decided not to strike?

A. Yes.

Q. How many men voted against a strike?

A. I don't think I have to answer that.

Q. I think it is important to see how much dissatisfaction there was there.

Chairman MADDEN. I think you may answer.

A. We had a two-thirds majority, and I guess there was just a few members over half who voted to have the strike, and we had to have a two-thirds majority, so the strike was not effective.

Q. (By Mr. CARMODY.) Oh, your rules required you to have a two-thirds majority before you struck?

A. That is in the bylaws of the American Federation of Labor.

684 Q. Oh, then, a majority cannot call a strike; you have to have two-thirds?

A. Yes.

Q. (By Mr. KLEIN.) How many members were at this meeting?

A. I don't know.

Q. Were there sixty men?

A. There were more than sixty men.

Q. Were there seventy men?

A. I could not say.

Q. You would not say there were more than seventy men, would you?

A. I don't know.

Q. You know there were less than seventy men, don't you?

A. I could not say.

Q. Weren't you interested enough to know?

A. I was.

Q. So, only a little over half of your whole membership was at that meeting?

A. I don't know.

Q. You said there were only seventy men there, and the total membership was around 120?

A. I did not say there was 70.

Q. You have an idea, don't you?

A. I don't know.

Q. How did you determine the vote?

685 A. The vote was counted and it was passed up to me—told to me. I did not count the vote.

Q. Who counted it?

A. I don't know. There was five men selected from the body to count the vote.

Q. Who has a record of that, of who cast the vote? Don't you have minutes?

A. We did not question the record.

Q. Don't you have a minute book?

A. We have.

Q. Isn't that in the minute book?

Mr. PATTERSON. You bet it is.

Q. (By Mr. KLEIN.) (Continuing.) Of who voted?

A. I don't know.

Q. And how many were at the meeting?

A. I don't know.

Q. You would not say there were more than seventy there?

A. I don't know.

Q. You know there were generally more than 70 men?

A. I don't know.

Q. You mean you don't care to know?

A. Yes.

Q. Weren't you interested in this strike?

Chairman MADDEN. This is taking a great deal of time. I do not like to limit your cross-examination. Will

686 you explain the relevancy of that?

Mr. KLEIN. Well, there have been some talk of unrest and I want to develop from this witness how little unrest there was at the factory.

Mr. PATTERSON. There was plenty.

Chairman MADDEN. Now, you realize, before you go into that, that this evidence is of the sort that cuts two ways. I mean, on your own admission the company had done these things which Mr. Vosler testified to and which might very well have had the effect of keeping people from attending union meetings, and so when you bring down the attendance why, of course, it is susceptible of a conclusion that the company's tactics in that respect were successful?

Mr. KLEIN. Yes, when they only have 120 members, many of whom did not go to the meetings, out of a total employment of 700 or so, it indicates that this group represented a very small number out at the factory.

Chairman MADDEN. And, therefore, had no right to take action?

Mr. KLEIN. I am not discussing that. I am merely trying to show that only 70, which is less than two-thirds, voted to strike.

Mr. EDWIN S. SMITH. The actual or potential unrest as a result of unionization was so high that Mr. Vosler hired this detective agency——

687 Mr. KLEIN. He hired it because there was soliciting during working hours.

Chairman MADDEN. He did not stress——

Mr. KLEIN. That was one of the reasons. There were other reasons. He was watching the men like they do in every factory.

Chairman MADDEN. But, with relation to the union, Mr. Vosler did not stress that side of it. He did include it.

Mr. KLEIN. I so understood him. I did not say he stressed it, but that was one of the points.

Q. (By Mr. KLEIN.) You did not object to someone saying that molasses is better than vinegar, did you?

A. I wasn't interested in that part.

Q. Well, you don't think that is wrong, do you?

A. I don't know.

Q. Well, don't you think that trying to adjust something pleasantly is better than fighting or striking about it?

A. Just what do you refer to?

Q. If you have a grievance, isn't it better to go and discuss it with the men you have a grievance against?

A. We always tried to do that. That was our policy.

Q. But yet you attempted to vote on a strike without talking to your employers about it?

A. They denied us a conference previously.

Q. Two months before?

688 Mr. PATTERSON. Wait a minute. He did not say anything of the kind.

Q. (By Mr. KLEIN.) How long was it?

A. I don't know.

Q. You don't know and you won't say that it was two months?

A. I don't know.

Q. Was it a month and a half?

A. I don't hold such things in my memory.

Q. You wrote the letter previous to the decision in this N. R. A. case?

A. Yes.

Q. And that was in May 1935?

A. I know it was just during that period and after the N. R. A. was ruled out, they would not listen to us.

Q. That was about a month and a half before you lost your decision—that decision. And during this whole time you were very anxious to get members in your union, weren't you?

A. Very anxious.

Q. Constantly?
A. Constantly.
Q. You were drilling your men to get more members?
A. I wasn't drilling them.
Q. I mean——
A. I was advocating that.

689 Q. Did you object when a nonunion man told you he had objections to joining?

A. I can't remember. I tried to explain why he ought to, if he did not think he ought to. I thought——
Q. And if he said "No" you still kept after him; you thought he might change his mind?
A. I did not.
Q. And didn't you urge him to the extent that you annoyed a lot of them?
A. I did not.
Mr. CARMODY. Will you bring in some witnesses who were annoyed?
Mr. KLEIN. I am bringing it out by this witness.
Mr. CARMODY. Why not bring it in through the men who were annoyed?
Mr. KLEIN. I don't know.
Chairman MADDEN. The thing is that in all this sort of examination there is a sort of implied promise that you will bring in witnesses to refute the witness' statement.
Mr. KLEIN. Not necessarily. If the witness denies it and unless I bring in testimony to the contrary, the rule of law is that I have no contrary testimony on that and——
Mr. CARMODY. Just go ahead. I thought if there were such men it would be well to see them.
Mr. KLEIN. You might see them.

690 Q. (By Mr. KLEIN.) When you were urging the the men who were not union members to become union members, didn't Mr. McDonald or someone from the federation urge you to get members, that it was a good thing to get a stronger local?

A. The general policy of the American Federation is to get members.
Q. Exactly, and those men were not Fruehauf men?
A. What men?
Q. The men outside the local?
A. They worked for the American Federation.
Q. But they did not work for the Fruehauf Trailer Company?
A. No; they did not.
Q. Now, I am again asking you: In constantly urging you—I mean these American Federation men—to get members, weren't the American Federation or these organizers

getting paid for each new member that the Fruehauf Company local union got?

A. Well, now, I don't know.

Q. You are president of the union and you don't know if part of the membership dues were not paid to the American Federation of Labor or to an organizer?

A. It was paid to the American Federation of Labor, but I don't know if it was paid to the organizers.

Mr. EDWIN S. SMITH. May I interrupt at this moment to ask you a few questions about this line of questions that you are asking the witness?

Mr. KLEIN. Yes, sir.

691 Mr. EDWIN S. SMITH. I suppose you are aware of the fact that the American Federation of Labor is supported from funds from locals, either directly affiliated with the Federation, such as this union was at that time, a Federal labor union, or there is an international union with which all other locals are affiliated——

Mr. KLEIN. There is no question about it.

Mr. EDWIN S. SMITH. You also know that the purpose of the American Federation is to further the interest of the working class in this country?

Mr. KLEIN. I assume that is the avowed purpose.

Mr. EDWIN S. SMITH. It is a perfectly legal objective, is it not?

Mr. KLEIN. If it is conducted legally it is perfectly within the rights.

Mr. EDWIN S. SMITH. Well, is there anything astonishing to you that these men, in conformity with the rules set down by the American Federation or the rules of their own local, should contribute funds to the American Federation of Labor?

Mr. KLEIN. No, but I want to develop that that was part of the motive, possibly, of getting in members, to produce greater funds.

Mr. EDWIN S. SMITH. The Fruehauf Company is a member of the Michigan Manufacturers Association, is it not?

Mr. KLEIN. I understand it is.

692 Mr. EDWIN S. SMITH. Doesn't the Michigan Manufacturers Association solicit members from among the manufacturers of Michigan?

Mr. KLEIN. I am sure I don't know.

Mr. EDWIN S. SMITH. Well, it couldn't exist without members, could it?

Mr. KLEIN. That is true.

Mr. EDWIN S. SMITH. And every member contributes to the treasury?

Mr. KLEIN. Yes.

Mr. EDWIN S. SMITH. That is all.

Mr. KLEIN. We will give you the amount of our dues.

Chairman MADDEN. I don't see the materiality.

Mr. KLEIN. Well, I do, because I think there is a decided effort, a constant pressure to organize, and I think that has a bearing here.

Mr. CARMODY. Why not put Mr. McDonald on the stand or somebody connected with the American Federation?

Mr. KLEIN. I have got this witness. He knows what they pay.

Chairman MADDEN. Are you introducing testimony aimed at the general philosophy of this law, which is a law to make possible the organization of workmen, if they want to organize? Is this line of testimony aimed to show the undesirability of that general policy?

693 Mr. KLEIN. This question is aimed at this point: Certain men involved in this proceeding which we are trying here—the question involves the discharge of the seven men or the laying off, or whatever term may have been used, and one of the reasons for the discharge of certain men was that they were soliciting or agitating for union members on the premises during working hours after they had been warned not to do so by the company, and the extent of agitation may be developed by showing the source of agitation or solicitation. I am not criticizing the attempt to get more members, but I want to show that it was done during working hours and I want to develop that that is how that took place.

Mr. EDWIN S. SMITH. I want to say, as one member of the board, that it would be of no interest to me to know whether this union or local contributed 10% or 25% of its dues to the American Federation. I have no idea. It may be less, and I see no objection to the witness answering the question. On the other hand, the situation is so well known that it does not need any elaboration. I presume that these locals contribute to the American Federation because they think it is to their interests as members to do so.

Mr. KLEIN. I presume they do or they would not pay it, but I presume the board will want to know these facts.

Chairman MADDEN. You may answer fully any question that Mr. Klein asks you with reference to this matter

694 so far as you know.

Q. (By Mr. KLEIN.) How much was paid by each new member, or, out of the membership dues to the American Federation of Labor?

A. Well, it is nothing new. Everybody knows it. When we first started our local the initiation fees were $2.00 and $1.00 went to the Federation.

Q. And half of that goes——

A. Half of that goes to the American Federation. And after that we paid so much a month, and 30¢ a month went to the American Federation, which we got a magazine for which sells at any news stand for 25¢.

Q. 30¢ a month?

A. Yes.

Q. And how much initiation?

A. $1.00.

Q. All of which went to the Federation?

A. It did not. 25¢ a month went to the magazine, and 5¢ went to them.

Q. You sent them the 30¢ and then you got the magazine. I mean, they did not say, "Just send us 5¢", but you sent 30¢ a month to them?

A. Right.

Q. (By Mr. PATTERSON.) And has each member got the magazine?

A. Right, every month.

Chairman MADDEN. On a membership of 140 that
695 would amount to——

Mr. EDWIN S. SMITH. On a membership of 140 that would amount to $45 a month to the American Federation?

Mr. KLEIN. And if they had a number of locals there would be a lot of $45?

Mr. EDWIN S. SMITH. So far as this local is concerned.

Mr. KLEIN. Yes.

Chairman MADDEN. I want to remind you here that at that same time the company was paying $175 a month to the Pinkerton Detective Agency.

Mr. KLEIN. That is correct, sir.

Chairman MADDEN. It was outside——

Mr. KLEIN. It is bound to be a necessary company expense, at least they thought so.

Mr. CARMODY. Let us go ahead with the witness. What further do you want with him?

Q. (By Mr. KLEIN.) And when members dropped out of your union or did not pay their dues, naturally their 30¢ was not sent on to the American Federation?

A. For every month a member paid his dues there was 30¢ sent to the American Federation.

Q. And if he did not pay his dues they were not sent on?

A. If he did not pay his dues for 90 days he was suspended.

Q. And if he did not pay his dues they did not get the 30¢

A. No.

696 Q. Did they get it or did they not get it?

A. They did not get it.

Q. And isn't it a fact that after the strike was voted down that someone from the American Federation said that it was a serious mistake not to strike?

A. He did not say any such thing. He said that was the privilege of the men to do as they saw fit because he wasn't in the shop; he was outside.

Mr. PATTERSON. I hope you are prepared to prove that.

Mr. KLEIN. I am asking the witness.

Q. (By Mr. KLEIN.) He talked at the meeting, didn't he?

A. He did.

Q. Did he discuss the strike?

A. He did.

Q. What did he have to say?

A. Well, in general, that it was up to the men, that they were the ones that were working in the plant, that it was up to the men to say whether they wanted to strike or whether the conditions were good enough not to strike; all he could do was to give them legal advice which they asked for, as our legal adviser.

Q. Did he tell you not to strike?

A. He didn't say no such thing.

Q. He did not tell you to strike or not to strike?

A. No.

697 Q. How was it he was asked to talk at all?

A. Well, he did not talk to any extent to urge us not to strike or to strike. He was trying to give us legal advice of what we could do and what was right for us.

Q. Who asked him to talk?

A. That was a general rule, for someone from the American Federation to be at our meetings to see that there was no Communists in it.

Q. So you were worried about Communists also?

A. Yes.

Q. Why don't you want Communists in your union?

Mr. PATTERSON. I object.

Mr. KLEIN. Withdrawn.

Q. So the company was not the only one who was worried about Communists, were they?

A. I don't know.

Q. Well, you were worried about it?

(No answer.)

Q. Well, he just got up during the course of this strike discussion and talked and he said, "The men can do whatever they want?"

A. He was asked to talk.
Q. He was asked to talk?
A. He was asked to explain what a strike situation was.
Q. He was asked to explain what a strike situation was?
698 A. Right.
Q. Was he asked to explain whether the union ought to go to the company to discuss the situation about which they were going to strike first?
A. We tried that and we could not get no conference.
Q. I am asking whether he talked about it?
A. He did.
Q. What did he say about it?
A. He said it would be advisable to notify the management, or request a conference to settle all differences before taking any strike action.
Q. But you did not listen to him?
A. We did.
Q. Well, you did not go to the company after that meeting?
A. No, but that was the general policy before that night.
Q. I am talking about that night, the night you voted on the strike?
A. We did.
Q. You did not go to the company after that, did you?
A. No.
Q. And what did he say to the meeting about that?
A. He did not say anything.
Q. Didn't he urge you to go to the company first and try to adjust it?
A. He did.
699 Q. But you did not listen to his advice; you did not go?
A. Because we could not get no results the first time.
Q. But you did not listen to the advice of your legal advisor?
Mr. PATTERSON. He said he did.
Mr. KLEIN. I am trying to get his answer.
A. We did.
Q. You did listen to his legal advice?
A. To a certain extent, of what we thought was right.
Q. But not to the extent of going to the company and discussing it?
A. We did go on that night.
Chairman MADDEN. Just a moment.
The WITNESS. We did too.
Chairman MADDEN. Does Mr. Vosler want to change his testimony with reference to the proposition that he stated yesterday that when the Supreme Court declared the

N. R. A. unconstitutional that the company thereafter did not bargain with their men?

Mr. KLEIN. I don't think there is any statement in the record that they refused to talk to their men after that. I think the record shows that they did talk to their men.

Mr. PATTERSON. Not to the union.

Chairman MADDEN. As individuals, of course. But, did you mean, Mr. Vosler, after the Supreme Court declared the N. R. A. unconstitutional, you did not longer bargain
700 collectively with your men?

Mr. VOSLER. With the union.

Chairman MADDEN. So that as a matter of fact this whole line of cross-examination is a perfectly futile thing?

Mr. KLEIN. I will develop that, but Mr. Vosler testified they did talk to their men.

Chairman MADDEN. Are you or are you not, Mr. Klein, questioning this man about a union committee going to the management; is that what you are talking about?

Mr. KLEIN. That is what I am talking about; yes, sir.

Chairman MADDEN. Well, I hope you will be as brief as you can.

Mr. EDWIN S. SMITH. I hope, Mr. Klein, that you have some specific object in your mind as to the kind of questions you are asking. The whole thing seems to be very confusing to the point where you seem to challenge the witness' statement that the men in the plant were influenced by the activities of a person whom you refer to as an outsider, and in your last few questions you throw approbrium on the men because they did not follow the advice of an outsider by going to the company.

Mr. KLEIN. The witness is inconsistent, and I am following up the witness' inconsistency, and if he testifies inconsistently it is not worth a great deal.

Mr. EDWIN S. SMITH. What is the inconsistency in his testimony so far as you have developed it?

701 Mr. KLEIN. This witness, of course, is not a very cordial witness.

Mr. PATTERSON. And naturally the cross-examiner isn't cordial either.

Mr. KLEIN. And naturally the cross-examiner isn't when the witness appears to be hostile.

Chairman MADDEN. I think we can save time by letting you go ahead and ask any question that you please.

Q. (By Mr. KLEIN.) So at this union meeting where you had the strike vote you said the American Federation speaker talked during the strike discussion, and do I understand you correctly to say that he again advised you to go to the company that night that you voted on the strike?

A. No; he did not say before—before we went on strike,

Q. Before you went on strike? But it was all right to call a strike vote before?

A. He did not say.

Q. He did not say whether that was a wise thing or not?

A. He said that was up to us.

Q. Or did he say it was a wise thing to talk to the company before you went on strike, "They may take these men back?"

A. He said it was a wise thing to talk to the company before we went on strike.

Q. (By Chairman MADDEN.) Do you know whether or not it is customary in case of a strike to first take
702 your strike vote and after the strike is voted to present the matter to the company in the hope that a strike may not be necessary?

A. Right.

Q. (By Mr. KLEIN.) And it was your purpose, then, to take a strike vote and then go to the employer if a strike vote was passed?

A. Right.

Q. And say, "Unless you do this we will strike." Was that your purpose?

A. We went to the employer anyway. I just refreshed my memory.

Q. After the vote?

A. Yes.

Q. You did not tell him you were going to strike?

A. I did not get to see him. As far as I got was the telephone booth, or, the lobby there.

Q. But you were going to take a strike vote first, before you went to see him?

A. Right.

Q. You were not going to go in there in a friendly manner and say, "Now, Mr. Employer, I don't think you know all the facts about this man, and you ought to take him back?"

A. I was the one involved.

Chairman MADDEN. When you say "you" you are talking about a union committee?

Mr. KLEIN. I am talking about a union committee.

703 Q. Didn't the union think it would be better to go over there in a conciliatory manner with molasses instead of vinegar?

A. We tried that.

Q. But your first voted for a strike. You were not very conciliatory about it?

A. We went there before we voted.

Q. And then you went there afterwards. That was a month and a half before, was it not?

A. And then we went there after. My memory is just refreshed.

Q. Not before this strike meeting?

A. What is that?

Q. Not before you voted on the strike?

Mr. PATTERSON. That is what he just said.

Q. (By Mr. KLEIN.) Did you go to the employer a day or two before you voted on the strike?

A. Not a day or two, but we were there three or four days after.

Q. After you voted on the strike?

A. I don't remember. I believe it was.

Q. So you are confused about it; you don't know whether it was before or after?

A. After.

Q. So you first took a vote on whether you were going to strike or not, and then went to see your employer?

A. Right.

704 Q. You did not go there in a conciliatory manner before you voted on the strike?

A. No.

Q. (By Mr. EDWIN S. SMITH.) After this strike meeting, who went and called on the management?

A. There was Mr. McDonald, myself, and, I believe, Hillman, and Coonrod, and I don't know whether there was one more or not. Anyway there were four or five of us, and we went to the office of the company.

Q. What steps did you take; whose office did you go to?

A. Right to the main office, where the lobby and telephone booth is.

Q. You mean to the information girl?

A. Yes.

Q. What did you say to her?

A. We asked to speak to Mr. Vosler, the Secretary of the company, and she said, "Just a minute. Sit down." And after we were there a considerable time she said Mr. Vosler wasn't in.

Q. Wasn't in. And you made no further efforts after that to get in touch with him?

A. We did. She said she would leave a call for him and they would call the American Federation of Labor office as soon as Mr. Vosler got back.

Q. Yes. And what further did you hear from him?

705 A. Nothing.

Q. (By Mr. KLEIN.) Did you call later again?

A. No.

Q. You did not try any more?

A. We were waiting for a telephone call from Fruehauf's.

Mr. KLEIN. That is all.

Re-direct examination:

Q. (By Mr. PATTERSON.) Was this attempted conference, Steve, that you have just related—was that after the strike vote or before?

A. Before.

Mr. PATTERSON. Mark that the next exhibit.

(The document referred to was marked "Complainant's Exhibit No. 16" for identification.)

Q. (By Mr. PATTERSON.) I will hand you what has been marked for identification complainant's exhibit 16, and ask you whether you have ever seen the original of that?

A. Yes, sir.

Q. Where did you see the original of this telegram marked complainant's exhibit 16?

Mr. CARMODY. Do you want to show it to counsel?

Mr. PATTERSON. Excuse me.

(Mr. Patterson hands exhibit to counsel.)

706 A. I don't know as I saw the original. I know it was sent; it refreshes my recollection.

Q. This wire was sent from whose office?

A. The American Federation of Labor office.

Q. And I notice that this wire says—or is addressed to Mr. E. L. Vosler, vice president, Fruehauf Trailer Company, 10940 Harper Avenue.

Mr. KLEIN. Are you offering it in evidence?

Mr. PATTERSON. I am going to, certainly.

Mr. KLEIN. Well, I think you ought to offer it first, before you read from it, sir.

Q. (By Mr. PATTERSON.) When that wire—were you in the offices of the American Federation of Labor when that wire was sent?

A. I was.

Q. Do you remember what date it was, with respect to the 8th day of July?

A. It was around that.

Q. Do you remember what date the 8th was on?

Mr. CARMODY. Date, or day do you mean?

Chairman MADDEN. Day.

Mr. PATTERSON. Day, yes.

A. No, I don't remember.

Q. (By Mr. PATTERSON.) This was a day or two before the 8th of July was it?

A. I expect so. I think that it was right around

707 that time. As I recall it, it was just around the 8th or so.

Q. Do you remember what the occasion was for sending this wire to Mr. Vosler?

A. For a conference.

Compltd Ex 16-16

Address to the Attorney of American Federation of Labor 603 Wardman Building Detroit Mich.

Telegraph

Send the following message, subject to the terms on back hereof, which are hereby agreed to

MR E L WOSLER VICE PRESIDENT
FRUEHAUF TRAILER COMPANY
10960 HARPER AVENUE
DETROIT MICH

I HAVE BEEN INSTRUCTED BY THE COMMITTEE OF UNITED AUTOMOBILE WORKERS LOCAL 19670 REPRESENTING ALL EMPLOYEES IN YOUR PLANT REQUESTING FOR CONFERENCE WITH YOU NOT LATER THAN NOON MONDAY JULY 8.

RODERICK MCDONALD
SPECIAL ORGANIZER
AMERICAN FEDERATION OF LABOR

NATIONAL LABOR RELATIONS BOARD
CASE NO. C-2 | Compltd | EXHIBIT NO. 16
IN THE MATTER OF American Trailer
DATE 11-8-37 WITNESS Spratt
SMITH & HULSE OFFICIAL REPORTERS
BY

Board Exhibit 16

Q. Did you ever get an answer to it?

A. Never.

Mr. PATTERSON. I offer it in evidence as complainant's exhibit no. 16.

Chairman MADDEN. May we see what it says?

Mr. KLEIN. What is the purpose of the offer?

Mr. PATTERSON. The purpose of the offer, may it please the Board, is to show that they did attempt to communicate with the Fruehauf Trailer Company before taking the strike vote, and they did not get to first base.

I believe the document bears the number 15. That should be marked "16" instead of "15."

Mr. CARMODY. I will just correct the marking right here.

Chairman MADDEN. May we ask Mr. Vosler—Mr. Vosler, did you in any manner acknowledge receipt of this telegram?

Mr. VOSLER. No, sir.

Chairman MADDEN. You simply ignored it; did you?

Mr. VOSLER. Yes.

Mr. KLEIN. I will develop that.

Mr. CARMODY. Did you receive the telegram?

Mr. KLEIN. Yes, we received it, and I will develop
708 that, sir, with this witness.

Chairman MADDEN. There is nothing to develop.

Mr. KLEIN. Oh, yes, I think there are some further facts that are very important.

Chairman MADDEN. Well, maybe. Let the exhibit be admitted.

(The document previously marked "Complainant's exhibit No. 16" for identification, was received in evidence, Witness Sprytzer.)

Mr. PATTERSON. I think that is all.

Recross-examination:

Q. (By Mr. KLEIN.) Mr. Sprytzer, did you read this telegram very carefully when it was sent?

A. Well, sir, I did not. I know it was requesting a conference.

Mr. KLEIN. May I have the telegram?

Q. And does it not say that the United Automobile Workers—or that the committee of this local 19375, represents all of the employees in the plant?

A. I do not know what it says.

Q. Well, you read it and see.

A. That is what it says.

Q. That is what it says?

A. Yes, sir.

Q. And does your union, or did your union on July 6th have more than 120 members in it?

709 A. At some time or other, we represented the majority.

Q. Did you ever have on your rolls more than 120 members?

A. Yes.

Q. When?

A. I do not recall.

Q. I just asked you before, how many you had?

A. I do not recall.

Q. What is the most you ever had on your rolls?

A. I do not remember.

Q. You do not remember?

A. No.

Q. You told me, I believe, that 120 was about the most you had?

A. I do not know.

Q. You would not say that you had more, would you?

A. I do not know.

Q. You would not say that there were not any men in the plant who did not belong to the union, would you?

A. Oh, yes, there was.

Q. There were?

A. Yes.

Q. But this says that you represent them all?

A. That is what it says.

Mr. PATTERSON. Did you ever hear of majority rule?

Q. (By Mr. KLEIN.) You did not have 350 members in your union, did you?

710 A. I don't know.

Q. Well, you were president of the union?

A. I was.

Q. Who has the membership roll?

A. The secretary.

Q. Where is the secretary?

A. (No answer.)

Mr. KLEIN. I think that is important, sir. They send a telegram claiming to represent all, when as a matter of fact they did not represent more than their own small group. That makes some difference.

Chairman MADDEN. Some difference with reference to what?

Mr. KLEIN. As to whether or not the company should recognize a statement of that character which is so very erroneous——

Mr. PATTERSON. Well, now——

Mr. KLEIN. As a matter of fact.

Mr. PATTERSON. We are getting onto something else now——

Mr. KLEIN. Well——

Chairman MADDEN. Do you claim that your company did not have to recognize it, or do anything about it?

Mr. KLEIN. Well, he says that we refused to talk to them, that we did not answer it.

Mr. PATTERSON. Yes.

Mr. KLEIN. And there is some implication attempted to be drawn from that. I just wanted to show, among
711 other reasons, why it was not answered.

Chairman MADDEN. Was that the reason?

Mr. KLEIN. That was one of the reasons; yes, sir. If they had said, "We represent the men"—60 men, or 80 men, or 100 men, or whatever they had on their membership rolls, I think that would have been a correct statement.

Chairman MADDEN. And the company then would have done what?

Mr. PATTERSON. Yes.

Mr. KLEIN. We would have been governed by what we believed proper, under the circumstances, sir.

Mr. PATTERSON. Yes.

Mr. KLEIN. Exactly.

Mr. EDWIN S. SMITH. How does that tie in with Mr. Vosler's testimony, given here yesterday, that after the N. R. A. decision he did not receive the men? He answered, in reply to a question, from me, that he considered that his legal obligations were at an end.

Mr. PATTERSON. That is right.

Mr. EDWIN S. SMITH. Now, are you trying to demonstrate to the Board that if this union had in fact represented all of the employees, he would have been—he would have then altered his attitude, and received the committee?

Mr. KLEIN. The fact remains that this union—or this representation was an exaggerated one. They never had
712 on their rolls, as I understand it, from this witness, more than 120 men, or approximately 120 men; and all of their demands—or, I do not say all of their demands, but the representation in this respect was exaggerated.

Chairman MADDEN. Well——

Mr. KLEIN. And therefore, when he was dealing with a group that claimed to represent numbers that were exaggerated, why, he did not deem that a wise procedure, naturally, when they did not state the situation correctly, sir.

Chairman MADDEN. Well, you are telling us now what went on in Mr. Vosler's mind.

Mr. KLEIN. Yes.

Chairman MADDEN. About which he has not testified.

Mr. EDWIN S. SMITH. Evidently he was aware of a possible exaggeration in the number of members at the time he

was dealing with these men during the N. R. A. but he felt an obligation so to do, nevertheless.

Mr. KLEIN. Only with such men as were represented by that group, by them so constituted. I believe that was the rule under the N. R. A.

Chairman MADDEN. Now let us ask Mr. Vosler. Mr. Vosler, after the N. R. A. decision did you or did you not deal with this union for any purpose; for the purpose of its own membership; for the purpose of all of the men in the plant; or any other purpose?

713 Mr. VOSLER. I do not think that there was ever any request for a conference until approximately this time, and we never met with them again.

Chairman MADDEN. When you stated yesterday that you did not deal—that you did not regard yourself as legally obligated to deal, and did not in fact deal with the men, since the N. R. A. decision, were you stating then a present policy of the company?

Mr. VOSLER. We have not had occasion to deal since then.

Mr. KLEIN. There have been no requests, outside of this one, where they claimed to represent all of the men. That is the only time there has been a request, as I understand the facts.

Chairman MADDEN. And this one, you say, Mr. Vosler, was ignored because of the exaggeration, as you claim?

Mr. VOSLER. Yes.

Chairman MADDEN. And you did not reply to it, saying "We do not believe that you represent all of the men, or that you represent a majority of the men?"

Mr. VOSLER. No; we did not reply to it at all.

Chairman MADDEN. You made no reply to it whatever?

Mr. VOSLER. No.

Mr. PATTERSON. May I ask the chairman in that connection to inquire of Mr. Vosler, along that same line, whether he knew of any other organization in his plant that

714 was attempting to represent his employees?

Chairman MADDEN. Will you answer that question, Mr. Vosler?

Mr. VOSLER. I did not; no, sir.

Mr. PATTERSON. This was the only one, was it not, Mr. Vosler?

Mr. VOSLER. Yes.

Mr. PATTERSON. This was the only organization that you knew of, representing your employees?

Mr. VOSLER. Representing some part of the employees.

Mr. PATTERSON. Well——

Mr. KLEIN. But men can bargain or deal with their employees without an organization. Collective bargaining does not require unionizing.

Chairman MADDEN. Well, the question——

Mr. KLEIN. That is the implication from that——

Chairman MADDEN. The question is, whether, if they had an organization, the company would deal with them.

Mr. KLEIN. No man has to deal through a union or an organization if he does not want to. Mr. Vosler has testified, and the witnesses have testified, that they always had the privilege of talking to their foreman or superintendent about their work; and they were never refused, as far as I understand it.

Mr. EDWIN S. SMITH. Your attitude, or at least
715 what you are now trying to develop as to Mr. Vosler's attitude, is that it is your belief that if the telegram had said, "This local, representing some of your men, would like to confer with you", he would have conferred?

Mr. KLEIN. If they had shown whom they represented, or at least advised correctly as to the number——

Chairman MADDEN. Will you answer that question, Mr. Vosler?

Mr. KLEIN. I believe that is so, although I do not know.

Mr. VOSLER. Well, it has been months ago, now, Mr. Chairman, and just what we may have had in mind at that time is rather hard to tell.

Chairman MADDEN. Well, recollecting the best you can now——

Mr. VOSLER. Pardon me, sir?

Chairman MADDEN. I say, recollecting it now as best you can, what would you say your attitude was at that time?

Mr. VOSLER. If anybody came to us, to meet with us, as individuals, or representing any number of men, any organized number of men——

Chairman MADDEN. As an American Federation of Labor organization?

Mr. VOSLER. (Continuing.) We had always met previous to this time.

Chairman MADDEN. To what time?

Mr. VOSLER. Pardon me?

716 Chairman MADDEN. Previous to what time?

Mr. VOSLER. Approximately this date; I could not tell you the exact date.

Chairman MADDEN. Well, did you not mean what I thought you testified to yesterday, that the decision of the Supreme Court in connection with the N. R. A. marked a very definite point in your industrial policy, namely, that up to that time you had gone along with the matter of collective bargaining because you thought that the law compelled you to do so, but after the Supreme Court rendered its decision, you knew that the law did not compel you to do so, and you stopped short right there?

Mr. VOSLER. That was actually what happened, because we had no occasion to——

Mr. CARMODY. It seems to me that is the important thing, what actually happened; and what this man has stated several times as having happened, it seems to me to clear up that issue; and I do not see why we pursue it, and pursue it, and pursue it. This is getting almost juvenile.

Mr. KLEIN. Yes.

Mr. CARMODY. (Continuing.) Some of these remarks.

Mr. KLEIN. Claiming to represent all, when they did not represent more than 120? That is not juvenile.

Mr. CARMODY. Let me ask one more question here. Was Mr. Martin in your employ, Mr. Vosler, at the time
717 this telegram reached you?

Mr. VOSLER. I think so.

Mr. CARMODY. He was still in your employ?

Mr. VOSLER. Yes; I think he was.

Mr. CARMODY. All right.

Mr. EDWIN S. SMITH. Did you discuss the receipt of the telegram with him?

Mr. VOSLER. No.

Chairman MADDEN. Proceed.

Mr. KLEIN. I have no further questions.

Chairman MADDEN. Mr. Vosler, do you have this objection that your counsel seems to indicate, to outside people coming into union meetings of your men?

Mr. VOSLER. Doing what, Mr. Chairman?

Mr. KLEIN. That was not the objection.

Chairman MADDEN. Do you have the objection which your counsel seems to have, to outside people coming into union meetings of your men?

Mr. KLEIN. I did not say that was the objection. I said that this request was from outside sources and not from the men in the factory, who had been working in the factory.

That is as far as my statement went, sir.

Chairman MADDEN. What do you say about that, Mr. Vosler?

Mr. VOSLER. I am sorry, but I do not quite get your question, Mr. Chairman.

718 Chairman MADDEN. Well, do you think that it is objectionable, as a matter of fact, for outside people who are not workmen, employees of the Fruehauf Trailer Company, to take part in the union meetings of your men, and advise with them as to policy?

Mr. VOSLER. Probably not in a general way, until such time as it affects something else.

Chairman MADDEN. You see how inconsistent it was in that connection for you to plant Martin in that meeting?

Mr. KLEIN. Oh, I do not think so at all, sir. It just showed, among other things, that they did not represent all, but that they only represented 120.

Chairman MADDEN. We will recess at this time until 2 o'clock this afternoon.

Mr. CARMODY. Did you say you were through with this witness?

Mr. KLEIN. Yes.

Mr. CARMODY. How about you?

Mr. PATTERSON. No further questions.

Mr. CARMODY. Then we can dismiss this witness and have a new one at 2 o'clock, and get a fresh viewpoint here.

(The witness was excused.)

(Whereupon, at 1:05 o'clock p. m. November 8, 1935, a recess was taken until 2 o'clock p. m. of the same day.)

719 Chairman MADDEN. The hearing will come to order.

Mr. PATTERSON. Shall I proceed?

Chairman MADDEN. Proceed.

Mr. PATTERSON. Mr. Reporter, will you mark these cards as "Complainant's Exhibits 17 to 20", both inclusive, for purposes of identification?

(The cards referred to were marked "Complainant's Exhibits Nos. 17 to 20", both inclusive, for identification.)

Mr. PATTERSON. Mr. Beck.

ARTHUR BECK, was recalled as a witness for the National Labor Relations Board, and having been previously duly sworn, further testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) Mr. Beck, you are the same witness who has previously testified in this case, are you?

A. Yes, sir.

Q. Since this morning, in pursuance to the request of the board, have you checked through your files to ascertain whether or not you had any applications for union membership signed by Mr. Martin?

A. Yes, sir.

Q. I hand you what have been marked for purposes of identification as "Complainant's Exhibits Nos. 17 to 20", both inclusive, and ask you to state what they are?

A. They are applications for membership in the

720 United Automobile Workers Union, at the Fruehauf Trailer Company plant, taken and received by J. L. Martin, and turned in to the financial secretary of said organization; and a recommendation was adopted by the local to initiate such members as they saw fit.

Q. Now, do I understand that you got these four application cards from the file of the union?

A. Yes, sir.

Q. Now, Mr. Beck, directing your attention first to the card which has been marked "Complainant's Exhibit No. 17" for purposes of identification: That is written how?

A. You mean——

Q. In pen, pencil, or how?

A. Written in pencil.

Q. And the signature appearing at the bottom——

A. Is in script.

Q. J. L. Martin?

A. Yes.

Q. In script?

A. Yes.

Q. The card that has been identified as "Complainant's Exhibit No. 18", is filled out how?

A. That card is filled out in pen and ink, and printed.

Q. The name of John Martin is printed?

A. Yes, sir; it is, and the name of the applicant is in script.

Q. Is that the way this card came to you?

721 A. Yes, sir.

Q. As an officer of the union?

A. That is the way that I received the card from the past secretary; yes sir.

Q. Now, referring to complainant's exhibit no. 19 for identification: How is that written?

A. That is written in pencil, and it has—the applicant's name is in script, and the other information—or, I should say, the applicant's name is in print, and the other information is in script, and the name of John Martin is in print.

Q. That is written in pencil?

A. Yes, sir.

Q. Now, complainant's exhibit for identification no. 20: How is that written?

A. Exhibit 20 is all in script, with an indelible pencil, except the name of John Martin, which is in print.

Q. And the John Martin, or the J. Martin whose name appears on the bottom of these applications, opposite the words, "Received by" is that the same John Martin who has been testified about here as being a detective in the employ of the company?

A. Yes, sir; it is.

Mr. KLEIN. May I see those a moment, please?

The WITNESS. Certainly.

Mr. KLEIN. Do you know his signature?

The WITNESS. No, sir; I cannot say that I do know

722 his signature.

Mr. KLEIN. You did not see him sign these, did you?

American Federation of Labor
APPLICATION FOR MEMBERSHIP
The United Automobile Workers of America
Detroit Office—404 Hofmann Building, 2839 Woodward Avenue

No 23694

Name LEO KORB
Address 11244 E Promenade
Where Employed Packard Class of Work Inspector
Plant Location
Dept. No. Amount Paid 100
Application Fee—$1.00. Date
Received by

American Federation of Labor
APPLICATION FOR MEMBERSHIP
The United Automobile Workers of America
Detroit Office—404 Hofmann Building, 2839 Woodward Avenue

SERIES B
No 5838

Name James C Wesley
Address 12862 Hamill
Where Employed Fruehauf Trailer Class of Work Stock Room
Plant Location 10900 Harper
Dept. No. Body Shop Amount Paid
Application Fee—$1.00. Date
Received by John Martin

American Federation of Labor
APPLICATION FOR MEMBERSHIP
The United Automobile Workers of America
Detroit Office—404 Hofmann Building, 2839 Woodward Avenue

SERIES B
No 5839

Name Helmut Rippendorf
Address 6031 Commonwealth
Where Employed Fruehauf Class of Work Maint.
Plant Location Harper
Dept. No. Maintenance Amount Paid
Application Fee—$1.00. Date 5-24-35
Received by John Martin

American Federation of Labor
APPLICATION FOR MEMBERSHIP
The United Automobile Workers of America
Detroit Office—404 Hofmann Building, 2839 Woodward Avenue

No 23527

Name Helmut Rippendorf
Address 6030 Commonwealth
Where Employed Fruehauf Class of Work Carp. Mill
Plant Location Harper
Dept. No. Maintenance Amount Paid 40¢
Application Fee—$1.00. Date 5-14-35
Received by John Martin

Board Exhibits 17, 18, 19, 20

The WITNESS. I did not.

Mr. KLEIN. I suppose copies could be made available.

Mr. PATTERSON. Oh, yes, certainly.

Mr. KLEIN. At such time as we want to check.

Mr. PATTERSON. Certainly.

Mr. KLEIN. All right.

Mr. PATTERSON. I offer in evidence at this time complainant's exhibits 17 to 20, both inclusive.

Chairman MADDEN. Is there any objection?

Mr. KLEIN. There is no objection to them; no.

Chairman MADDEN. Very well.

(The cards previously marked for identification "Complainant's Exhibits Nos. 17 to 20", both inclusive, were received in evidence, Witness Beck.)

Mr. KLEIN. I would like to have a photostatic copy of these exhibits. I believe that there are only four of them in here?

Mr. PATTERSON. Yes.

Chairman MADDEN. 17 to 20?

Mr. PATTERSON. Yes.

Chairman MADDEN. Did you mention no. 16?

Mr. PATTERSON. No.

Chairman MADDEN. I do not see how we can undertake to give you photostatic copies,

723 Mr. KLEIN. Well, I would like to check the signatures, and see if we can locate Mr. Martin's signature. That is the only way I have of determining the correctness of the signatures.

Chairman MADDEN. Well, these were produced on your request this morning.

Mr. KLEIN. Right.

Chairman MADDEN. And we suggested——

Mr. KLEIN. The Board is not going to refuse me that right, surely.

Chairman MADDEN. We suggested to you at that time that you probably would not have any way of contradicting it.

Mr. KLEIN. Well, am I not entitled to that?

Chairman MADDEN. We asked the witness to produce these cards here this afternoon.

Mr. KLEIN. Yes.

Chairman MADDEN. Could you not have gotten samples——

Mr. KLEIN. No.

Chairman MADDEN. Of Mr. Martin's signature?

Mr. KLEIN. No, sir; I could not, not within this time. If this witness had testified under oath that these were the correct signatures, that would be all there was to it, but I do not think that the Board means to refuse me an oppor-

tunity to verify these signatures. These will be printed in the record some time I imagine. I do not care for
724 the man's name; that does not appear particularly important—I mean, the top man, the top name.

Chairman MADDEN. Well, of course we are not going to undertake to furnish you with photostatic copies of the exhibits in this case.

Mr. KLEIN. We shall be very glad to pay the cost of that, sir. I am sure that not more than $1 would take care of the cost of that.

Chairman MADDEN. Well, you may by arrangement with the reporter who has charge of the exhibits——

Mr. KLEIN. All right, sir.

Chairman MADDEN (continuing). Have reasonable access to them, for that purpose.

Mr. KLEIN. If I may have that permission, all right. Is counsel through with the witness?

Mr. PATTERSON. Yes, sir.

Cross examination:

Q. (By Mr. KLEIN.) Do you have a card here of July the 3rd—is that the date that Mr. Hillman testified about?

Mr. PATTERSON. I am sure I do not know.

Mr. KLEIN. Maybe he can tell us what that date was. What date was this application, Mr. Hillman?

Mr. HILLMAN. I don't know the exact date of it.

Mr. KLEIN. You do not know what date it was?

Mr. HILLMAN. No, sir.

725 Mr. KLEIN. You would not say that it was June——

Mr. HILLMAN. No.

Mr. KLEIN. Or May, or when it was?

Mr. HILLMAN. No, no. I could not identify the exact date.

Mr. KLEIN. And you do not know the man's name, who was the applicant?

Mr. HILLMAN. Oh, yes.

Mr. KLEIN. Will you tell us that name?

Mr. HILLMAN. No, not just now I would not.

Chairman MADDEN. Will you come up here please?

Mr. HILLMAN. Certainly.

Chairman MADDEN. Let me have that card.

Mr. KLEIN. Yes, sir.

(Mr. Hillman indicated to Chairman Madden the name on one of the cards.)

Chairman MADDEN. The witness—what is your name again?

Mr. HILLMAN. Hillman.

Chairman MADDEN. The witness Hillman has indicated that the name of the applicant on one of these four exhibits

was the name of the person whom he had testified to seeing sign an application in the presence of Mr. Martin.

Q. (By Mr. KLEIN.) What is that applicant's name, sir?

A. Well, now——

Chairman MADDEN. Go ahead and tell him.

726 A. Krippendorf.

Q. (By Mr. KLEIN.) How do you spell it?

A. I couldn't tell you how to spell it; it is a peculiar name.

Mr. EDWIN S. SMITH (spelling.) K-r-i-p-p-e-n-d-o-r-f.

Mr. KLEIN. All right.

Chairman MADDEN. All right.

Mr. PATTERSON. Is that all?

Mr. KLEIN. That is all.

Chairman MADDEN. That is all.

(The witness was excused.)

Mr. PATTERSON. Mr. Coonrod. Were you sworn yesterday?

Mr. COONROD. No, sir.

Mr. PATTERSON. Raise your right hand.

WOOLERY COONROD, called as a witness for the National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name?

A. Woolery Coonrod.

The REPORTER. Spell the first name.

The WITNESS (spelling). W-o-o-l-e-r-y.

Mr. CARMODY. Spell the last name.

The WITNESS (spelling). C-o-o-n-r-o-d.

Q. (By Mr. PATTERSON.) Mr. Coonrod, were you in court yesterday afternoon when Mr. Vosler testified?

A. Yes, sir.

727 Q. You are the teetotaler that he referred to?

A. Yes, sir, that's me.

Q. How long did you work for the Fruehauf Trailer Company?

A. Since the 28th of March 1927.

Q. What was your job?

A. Fitter.

Q. Will you please tell the Board what you mean by fitter?

A. Well, that is getting all of the parts of a trailer frame, the steel work, together, bolting them together, ready for reaming.

Q. (By Chairman MADDEN.) Bolting them together?

A. How?

Q. Do you bolt them?

A. Yes, tighten the bolts up, and check them all up for straightness, and one thing and another.

Q. (By Mr. PATTERSON.) At the time of your discharge, Mr. Coonrod, who was your foreman?

A. Mr. Goodell.

Q. And for how long a period prior to your discharge had he been your foreman?

A. I imagine about five years.

Q. When were you discharged?

A. The 5th day of July, 1935.

Q. And at what time of the day?

A. About 20 minutes after 2.

728 Q. In the afternoon?

A. Yes, sir.

Q. Now, previous to that, had Goodell ever said anything to you about your union activity or affiliation?

A. Once.

Q. About when was that?

A. Oh, I should say that was about in June of 1934.

Q. June of 1934.

A. Yes.

Q. What did he say to you?

A. He told me that I had better stay away from those meetings.

Q. Stay away from what?

A. From the union meetings.

Q. I see.

A. (Continuing.) That was the morning I went back on the day shift, after I had been on the night shift.

Q. Now, when you were discharged, what, if anything, did Mr. Goodell say to you?

A. Well, he came over to where I was working, and I had just finished a job. It was just about ten minutes before 2:30.

Q. Yes.

A. And he handed me a slip of paper, and said: "Slim, I have got to let you go."

Q. What did you say to him?

A. I said, "What do you mean?" He said, "Well,

729 I have got to fire you." I said, "For why?" He said, "For fooling around the damn union." And he said, "Now, don't blame me for this. I haven't got anything to do with it. It came down from the front office." And then I said, "You can't do nothing about it?" And he said, "No; I can't do anything about it. All I could advise you to do would be to go and see Mr. Halpin."

Q. Did you say anything to him at that time about the relative length of service of the men in the department?

A. No, I did not—not at that time.
Q. You did not?
A. No, sir.
Mr. EDWIN S. SMITH. May I interrupt for just a question?
Mr. PATTERSON. Certainly.
Q. (By Mr. EDWIN S. SMITH.) What was the slip of paper that he showed you?
A. It was a pay-off slip.
Q. What did it say on it, as to the reason for letting you go?
A. It said, "reducing forces."
Mr. EDWIN S. SMITH. All right.
Q. (By Mr. PATTERSON.) Did he say anything to you at that time Mr. Coonrod, about being under the influence of liquor?
A. Never a word.
Q. Did he ever criticize you for being drunk on the job?
A. Never.
730 Q. Were you ever drunk on the job?
A. Never.
Q. Were you over to the beer garden on the day you were fired, with Chaloux?
A. I ate dinner in there every day for two years.
Q. In the beer garden?
A. Before I was laid off.
Q. Every day?
A. Yes, sir, and they never even served me a glass of beer at noon.
Q. They never did?
A. No, sir, they never did. I always drank a cup of coffee, and in the summer time I drank milk.
Q. Well, now, after this conversation that you had with Mr. Goodell, did you talk to anybody else connected with the Fruehauf Trailer Company?
A. Yes.
Q. Who?
A. I talked to Mr. Halpin.
Q. Where did you see him?
A. In his office.
Q. On the same day?
A. Right immediately afterwards.
Q. All right. What did you say to Mr. Halpin, and what did he say to you, as near as you can remember?
731 A. Well, I walked into his office and introduced myself, because it was the first time I had ever had occasion to be in his office, and I did not know if he really knew me, or not; he had not been there but six or eight months, himself; and I told him—I said, "I have just been laid off. I have been working here eight or nine years, and

there are other fellows down there who have not been here two months." He said, "Well, that's kind of funny."

Q. He said what?

A. He said that that was a little odd. And I said, "Why am I being laid off?" He said, "Well, what do you think about it?" I said, "Well, all I know is what the foreman told me. He told me it was fooling around with the union." Halpin said, "Well, that is it."

Q. Halpin said "That is it"?

A. "That is it."

Q. All right. Did he say anything further to you at that time?

A. Yes. We talked along there a while, and he said—I don't know; there was quite a conversation went on; and after a while he told me that I was a fairly decent looking sort of fellow, he thought, and he would like to give me a chance. And he said if I would quit the union, and have nothing more to do with it, I could come back to work the next Monday morning.

I told him I believed I would take him up on that.

732 Mr. EDWIN S. SMITH. Will you speak just a little louder, please?

The WITNESS. Excuse me.

Mr. PATTERSON. Talk up just a little louder, please, Mr. Coonrod, so that all of the members of the Board can hear you.

The WITNESS. Yes, sir. I say, I told him that I would consider doing that, and I promised him that I would do it.

Q. (By Mr. PATTERSON.) What happened then?

A. Well, I got up and left then, and went home; and the more I thought about it, the less I thought about it.

Q. (By Chairman MADDEN.) Who was at home?

A. At home?

Q. Yes.

A. That is where I live.

Q. Are you a married man?

A. No, sir, I am not. I have an apartment at 1850 East Grand Boulevard.

Q. (By Mr. PATTERSON.) Proceed.

A. (Continuing.) And when Monday morning came around, well, I went back out there; I did go back, but I did not go in to work.

Q. You did not go in to work?

A. No, sir. I did not even want to go in there.

Q. Did you ever go back to see Halpin?

733 A. Well, the day that I was laid off, I did not get my pay that day. I went back then for my pay the following Wednesday I think.

Q. That was the Wednesday after the Monday when he suggested that you come back to work—or that you could come back to work?

A. Yes.

Q. (Continuing.) If you would give up the union.

A. Yes, sir.

Q. Did you see him on that day?

A. Yes, sir.

Q. Wednesday?

A. Yes, sir.

Q. What was said if anything on that day by him to you?

A. He said that he could do nothing for me; that I had lied to him, and that he would not even consider me—would not even consider taking me back at all.

Q. In other words, he said, because you did not come back to work Monday in accordance with your agreement——

A. Yes.

Q. (Continuing.) That he would not take you back.

A. That he could not do anything for me.

Mr. CARMODY. Let me ask a question right there.

Mr. PATTERSON. Yes, sir.

Q. (By Mr. CARMODY.) Did you make up your own
734 mind not to go back on Monday, or did somebody else help you to make up your mind?

A. Well, I had it pretty well made up before I saw anybody else. I didn't see anybody else until the next day.

Mr. CARMODY. I see.

Q. (By Mr. PATTERSON.) Did you tell Mr. Halpin why you had not come back to work on Monday, when you saw him on Wednesday?

A. Well, I told him that I had changed my mind.

Q. All right. Now, let me ask you this, Mr. Coonrod. Did Mr. Halpin make any representations to you as to what he intended doing with this union?

A. Yes, sir.

Q. What did he say?

A. He told me that he intended to bust it up.

Q. (By Mr. EDWIN S. SMITH.) When did he tell you that?

A. The afternoon I was discharged; and he told me also that I had been getting my bread and butter there for all of those years, and that they would do a whole lot more for me than the union could.

Q. (By Mr. PATTERSON.) By the way, Mr. Coonrod, some time prior to the time you were discharged, the company put on a night shift, did it not?

A. Yes.

Q. Did you ever work on that night shift?

A. Yes, sir.

735 Q. In what capacity?

A. Foreman.

Q. Throughout the seven years of your service with the company, was complaint ever made about the character or the quality of your work?

A. No, sir; never, that I ever heard of.

Q. Did they criticize you for being a sloppy workman?

A. They never did.

Q. Or for working too slowly?

A. They never did.

Mr. PATTERSON. That is all.

Cross-examination:

Q. (By Mr. KLEIN.) During this time that you worked for the company, Mr. Coonrod, the forman always talked to you at any time you wanted, did he not?

A. Yes.

Q. About your hours or wages?

A. Yes.

Q. Or your work?

A. Always.

Q. They never refused to talk to you?

A. No, sir; they never did.

Q. And the company treated you pretty well during all of that time, did it not?

A. Fine.

736 Q. Now, is it not a fact that this talk about the union that Goodell had with you, and that Halpin had with you, referred to soliciting union members during working hours, or on the premises?

A. Oh, I never did that.

Q. Did they not talk to you about that?

A. Never.

Q. No one ever told you out there not to solicit union memberships on the premises, or during working hours?

A. Never.

Q. And is it not a fact that Halpin made mention of that, when you went in to see him? Is it not a fact that he said, "You have got to cut out talking about the union, and soliciting members during working hours, or on the factory premises"?

A. No, sir; he never mentioned that, because I was already discharged then.

Q. Well, when he said he would take you back.

A. No, sir. He never said that.

Mr. KLEIN. That is all.

Mr. PATTERSON. That is all.

(The witness was excused.)

Mr. PATTERSON. Mr. Peterson. You were sworn yesterday I believe, were you not?

Mr. PETERSON. Yes, sir.

JOHN L. PETERSON, called as a witness for the
737 National Labor Relations Board, being first duly sworn, testified as follows:

Direct examination:

Q. (By Mr. PATTERSON.) What is your full name?

A. John L. Peterson.

Q. Where do you live?

A. 4260 Maryland Avenue.

Q. Are you married?

A. Yes, sir.

Q. Have you a family?

A. Yes, sir.

Q. When did you start working for the Fruehauf Trailer Company, Mr. Peterson?

A. May 7th, 1927.

Q. In what department?

A. I started in the service department.

Q. And what department were you in when you were fired?

A. I was doing approximately the same type of work, with the exception that my department was supposed to be affiliated with the assembly floor.

Q. Your section of the service department was connected with the assembly?

A. Yes, sir; for records, I think, only, or bookkeeping—for bookkeeping.

Q. When were you discharged?

738 A. October the 10th of this year.

Q. About what time of the day?

A. About 9:30.

Q. After having started to work on that day at what time?

A. 7 o'clock.

Q. (By Mr. CARMODY.) That morning?

A. That morning.

Q. (By Mr. PATTERSON.) In the morning?

A. Yes.

Q. Now, in the course of your work in the service department, were you in a position to ascertain the kind of orders which the company received for trailers?

A. In some cases, yes.

Q. What is the fact, Mr. Peterson, as to whether or not many of the trailers are manufactured according to specifications furnished by the customer?

A. Oh, yes; the majority of them are.

Q. In the course of the operation of this business, are trailers ever shipped in a knocked-down form?

A. Very frequently.

Q. Do you know of any of the destinations to which trailers are shipped in knocked-down form?

A. Well there are a good many of them that go for export——

Q. By "go for export", do you mean, to foreign countries?

A. Yes.

739 Q. Yes?

A. (Continuing.) And there are other knock-downs that go to various other branches.

Q. Yes.

A. Assembly stations, I believe they are termed.

Q. Do you know of any shipment of knocked-down trailers having been sent to Carter Trailer Sales in Richmond, Va.?

A. I could not specify any certain dates that those shipments were made, but I recollect of that having taken place; yes, sir.

Q. Now, does this company have any so-called travelling mechanics?

A. Yes, sir; they have one who specializes in travelling from one branch to another, contacting the service departments of those branches, and helping them build up a friendly feeling on the part of their customers; and generally seeing that the various service departments in those plants are functioning properly.

Q. Well, now, in the manufacturing, sale, distribution and assembly of trailers, what could a travelling mechanic do?

A. Well——

Mr. KLEIN. Pardon me. I think you ought to separate those elements.

Mr. PATTERSON. Well——

Mr. KLEIN. You have four different functions in

740 your question. Take one at a time.

Mr. PATTERSON. He has told you that the company is engaged in all of those functions.

Mr. KLEIN. Well, let him answer as to each one separately, giving a separate description as to each operation.

Mr. PATTERSON. You admit the company is engaged in all of those functions. You think they are separate, and I do not.

Mr. KLEIN. All right, but I think we are entitled to have them separated, as the basis for an objection.

Chairman MADDEN. What are the four items?

Mr. PATTERSON. Manufacture, sale, distribution, and assembly.

Chairman MADDEN. I am not sure—well, let the witness answer the question as it was put, and we will see whether he can answer.

The WITNESS. What is the question?

Chairman MADDEN. Let the reporter read the question.

(The question was read by the reporter as above recorded.)

Mr. KLEIN. I think the question should be: What does he do.

The WITNESS. I think I answered that.

Q. (By Mr. PATTERSON.) Yes; what does he do.

The WITNESS. I believe I answered that before.

Chairman MADDEN. Well, try it again.

A. Well, as I said before, he supervises the branches in regard to their operations, their efficiency in handling
741 their service, and their customers; and he also supervises any important changes that may be made in those jobs in various parts of the country. For instance, there were a few jobs done a short while ago I believe out in Akron, or some place like that, where a number of jobs were too heavy, and if I remember correctly, this man——

Q. (By Mr. CARMODY.) You say, a number of jobs were too heavy.

A. Yes.

Q. Do you mean that a number of trailers were too heavy?

A. Yes.

Q. For the job?

A. Yes; I had reference to that.

Mr. CARMODY. Yes.

A. (Continuing.) And I believe that this man was sent there also to supervise the lightening of those jobs, because for all over a certain weight the customer would have had to pay a certain amount more in weight taxes, as I understand it. So I believe those jobs were reduced in weight from 300 pounds to 400 pounds, or something like that, through some intricate and involved processes.

Q. (By Mr. PATTERSON.) Now, will you tell the Board, Mr. Peterson, whether or not it frequently happens in this business that a trailer which is sold in New York, or in New Orleans, or in Chicago—in connection with such
742 a trailer, the customer has some part of that trailer changed?

A. That is practically the 100 percent policy, especially in stock jobs.

Q. By "stock jobs" you mean those trailers that are made up by the company for stock, do you?

A. Yes, sir.

Q. As distinguished from those trailers that are made up on contract order; is that correct?

A. Yes, sir.

Q. Well, now, will you tell the Board of instances that you know of where some part of a trailer was changed as a condition of sale to the customer?

A. Well, the condition—the change might be so radical that it might change the complete make-up of the unit, you know. It might not only mean a change of axle or under-construction, but it might mean the addition or the subtraction of the apron belt in front of the job, which would also change the design of the body; or it might mean a lowering of the height of the body; or, as in this one case which I just mentioned, it might mean a lightening of the load, or the weight of the body, or the complete unit.

Q. Is that frequently done in the company's branches?

A. It is done frequently, yes sir.

Q. Now, Mr. Peterson, will you tell the Board something about the fifth wheel. Just what is the fifth wheel;

743 what is its general construction?

A. Well, the firm has about four or five different types of fifth wheels in various price ranges, and to suit various operations.

Now, the installation of the fifth wheel varies in time and charges; and it also varies, as I say, in price.

Q. Now, right there, Mr. Peterson, will you tell the Board about how much work is involved in the installation of a fifth wheel?

A. The various simplest fifth wheel, which I think would be the 4-14, or something like that it is called, would take about from an hour and a half to two hours. That is what would be involved if the work was done at the factory, where they had access to all of the factory equipment, where they had the U-bolts, and the woodworking machine available to make up the equipment for the proper installation; and where they had the advice of our engineering department, as to the proper location in regard to the distance ahead of the axle, and the distance back of the axle, and the correct height.

If this work was done at a branch, that was not properly equipped, I might say, the job in that instance might involve a half day's work, or possibly more.

Q. Now, is it not a fact, Mr. Martin, that one of the principal reasons——

The Witness. Correct that, please.

744 Mr. Farmbrough. How?

The Witness. Correct that, please.

Mr. PATTERSON. Oh, excuse me. Mr. Peterson, I should say.

The WITNESS. That is better.

Mr. PATTERSON. You are entitled to an apology for that, sir.

Q. Is it not a fact, Mr. Peterson, that the reason for maintaining two or three mechanics at these various branches is, that one of the chief jobs that they have to do is the installation of the fifth wheel on the customers' tractors?

A. Absolutely.

Q. And an ordinary truck is not a tractor that handles a semi-trailer until the fifth wheel has been put on it, is it?

A. Decidedly not.

Q. All right. Now, do the various factory branches of the Fruehauf Trailer Company carry an inventory?

A. As I understand it, they carry approximately a thousand, or possibly more—now, of course I do not have the figures available, and I would not know, but——

Q. (By Mr. KLEIN.) Have you ever been in a branch?

A. (Continuing.) That is the understanding that I had.

Q. Have you ever been in a branch?

A. Yes, indeed.

Q. In Detroit or out of Detroit?

745 A. I have been outside of Detroit as well. At one time I did some of this travelling mechanic work.

Mr. PATTERSON. Had you finished?

Mr. KLEIN. Yes. I just wanted to clarify that. I am sorry if I interrupted you.

Mr. PATTERSON. That is all right.

Q. Now, Mr. Peterson, do you know that the company consigns trailers, fifth wheels, frames, and parts to various distributors throughout the country?

A. Yes.

Q. Now, as a practical mechanic, what is your opinion as to whether or not the fifth wheel is a part of the trailer, or is an accessory?

A. Why, it certainly could not be classified as an accessory.

Q. The semi-trailer would be worthless without the connecting link, would it?

A. Positively.

Q. Now, then, Mr. Peterson, in July of this year, what was your particular work?

A. Well, I was foreman of a change-over department, it was called, although as I said before, it was something similar to the line of service work, as I had previously worked in the service department.

Q. So you were really a sub-foreman at the time
746 you were discharged on October the 10th, were you?
A. Yes, sir—I believe that I was classified as such, at least.

Q. Yes. Now, how many men were in your department?

A. Well, we had—I usually ran around five or six men, depending of course on the nature of the work or the amount of work that I had to do; and if more work was required to be gotten out, why, I communicated with my superior, the foreman, and he always loaned me additional men to get the work out in the designated time, as per schedule, you see.

Q. Now, from the 25th of June until the 21st of July, of this year, was there anybody laid off in your department?

A. Well, no, sir; there was not. One man quit, but that was all.

Q. One man quit?

A. Yes, sir.

Q. Was he replaced?

A. Yes, sir.

Q. The company hired a new man to put in his place, did it?

A. Absolutely.

Q. How many hours were you working about the middle of July?

A. Well, we were working—do you mean, per week, now, or per day?

Q. Per day.

A. Well, it wasn't any certain date specified—or I
747 should say it wasn't any certain time that could be specified. That is we started in at 7 o'clock, and we quit whenever our schedule was done. Now, whether it was 6 o'clock, or 7 o'clock, or 8 o'clock, we quit when our work was completed, which was allotted for that day's work.

Q. Well, on the average, now, during July and August, did you work more or less than 9 hours per day?

A. Well, I think that it would average beyond 9 hours per day.

Q. Beyond?

A. Yes, sir—well, above it.

Q. Things began picking up more markedly along in July, did they not?

A. Decidedly.

Q. And continued on the upturn right up through September, is that right?

A. Yes, sir.

Q. By the way——

Mr. EDWIN S. SMITH. Mr. Patterson.

Mr. PATTERSON. Yes?

Mr. EDWIN S. SMITH. How does the witness know that; that is, by what standard? The number of people in his department, or the number of jobs coming through, or what?

The WITNESS. Are you addressing that question to me, sir?

Mr. EDWIN S. SMITH. Yes; I will address the ques-
748 tion to you.

Mr. PATTERSON. Will you answer that question?

A. Well, I judge it by the activity in the plant; whether they were actively engaged in work; whether they were laying off men, or whether they had jobs to do. If there was nothing to do, certainly we would not be on the payroll there.

Q. (By Mr. EDWIN S. SMITH.) Well, what was the situation as regards employment in your end of the business in July, we will say?

A. Well, I know that our hours were increased, in order to get out the production that was required of us.

Q. (By Mr. KLEIN.) In the early part of July, or the latter part of July, was that?

A. Toward the—from about the middle, on toward the end.

Q. Toward the end?

A. Yes, sir; and then on up.

Q. And from the middle, or the end of July, it started to increase then, is that right?

A. From about the middle on.

Q. Yes?

A. It started to go right up again.

Q. Yes?

A. The valley had been reached.

Q. (By Mr. PATTERSON.) What is the fact, Mr. Peterson, as to whether or not this company was advertising
749 for help in the latter part of July, or the first part of August?

A. Yes, sir, they did that; it is a fact. I recall of an advertisement being published in a paper, calling for experienced body builders—or, rather, advertising for experienced body builders.

Q. Body builders?

A. Yes, sir.

Mr. KLEIN. May it please the Board, I think that we ought to have the advertisement, rather than the statement of the witness, which is hearsay.

Chairman MADDEN. He probably does not have it.

Mr. KLEIN. Well, the Government has it.

Chairman MADDEN. If he recollects having seen it——

Mr. PATTERSON. The company can very easily refute the statement, if it is not true.

Mr. KLEIN. Oh, well.

Q. (By Mr. PATTERSON.) Mr. Peterson, do you remember what paper you saw such an advertisement in?

A. Well, as I say—I heard that there was an advertisement in a paper advertising for body builders.

Q. You did not see it yourself, then?

A. (Continuing.) But I do not know which paper it was in.

Q. I see.

A. I do not know that.

Q. All right. Now, Mr. Peterson, do you know
750 that one of the customers that this company has is the Keeshin Motor Express Company?

A. Yes, sir. They are a large concern.

Q. You heard Mr. Vosler's testimony to the effect that this company has manufactured about 200 trailers so far this year for the Keeshin Motor Express Company; did you?

A. Yes, sir.

Q. Did you ever see any of those Keeshin Motor Express Company trailers out there?

A. Yes, sir; I have done work on lots of them.

Q. Are they built to the customer's specifications?

A. Absolutely.

Q. They are not stock jobs?

A. Oh, no.

Q. In other words, an order came into the Detroit plant from the Keeshin Motor Express Company, for trailers of certain specifications; did it?

A. Yes, sir.

Q. The Fruehauf Trailer Company built those trailers?

A. Exactly.

Q. And sent them out to the Keeshin Motor Express Company?

A. Exactly.

Q. Now, I believe that you said something to me about having seen a comment regarding the activity of the Keeshin Motor Express Company.

751 A. Yes.

Q. What was that?

A. If I may refer to it, I have a clipping here, which was taken from the Detroit Free Press, that will explain that quite well I think.

Q. What part of the Free Press?

A. Washington Whirligig—I believe it is called—or classified as.

Q. And when did that appear?

A. Last week if I remember correctly.

Mr. PATTERSON. I show it to counsel.

Mr. KLEIN. It is pure hearsay. What a newspaper reporter reports in a paper, is pure hearsay. My gosh! It is simply what he hears, and he reports it. It is not within this man's knowledge, what the Keeshin Motor Express Company does.

Chairman MADDEN. Let me see it.

Mr. PATTERSON. When it appears in the Washington Whirligig, it is generally pretty well known. I think the Board could almost take judicial notice of it.

Mr. KLEIN. "Whirligig" is a very good name for it.

Mr. PATTERSON. Yes; and that name might be very properly applied to Mr. Martin.

Chairman MADDEN. That is sufficient, gentlemen.

Mr. CARMODY. Let us dispense with that.

Chairman MADDEN. I think this ought not to be admitted..

752 Mr. PATTERSON. Very well. I will withdraw the inquiry about it.

Mr. KLINE. All right.

Q. (By Mr. PATTERSON.) Now, Mr. Peterson, what is the fact as to whether or not shipments were ever held up because particular parts were not in stock so that the job could be completed?

A. Well, that has happened frequently.

Q. Now, will you just illustrate to the Board how that might occur?

A. Well, ——

Q. (Continuing.) And why it should occur?

A. In some cases we had to hold men beyond the day's work in order to wait for the arrival of trucks bearing tires from Akron to install on a customer's unit, which he was waiting for, to drive away immediately upon its completion.

Q. Do you remember of any instance where something other than tires was missing, and a job was held up?

A. Oh, many times production has been held up for the lack of parts of several different natures.

Q. What kind?

A. Such as some brake parts, and sometimes steel of one kind or description, or another; or aluminum, or something like that. There are lots of hold-ups—occasionally.

Q. Is that more or less a common occurrence?

A. It is not out of the ordinary.

753 Q. Now, the employees in this plant, Mr. Peterson, worked on trailer jobs indiscriminately, that is, they did not have one group working on jobs that were intended to be sold to customers in Michigan and another bunch

working on jobs intended to be sold outside the State of Michigan?

A. No, sir.

Q. Do you know anything about the shipments this company makes to its subsidiary plant in Toronto?

A. I couldn't testify as to the quantity of the shipments.

Q. You know that they do make shipments to their Toronto plant?

A. Oh, yes.

Q. And isn't it a fact that the shipments which they make to their Toronto plant are for the most part not assembled?

A. That is true.

Q. And what is the fact as to whether or not this company sends practically everything that goes into a trailer to the Toronto plant, except the body?

A. That is quite true.

Q. Do you know how many employees they have in Toronto?

A. No, I am sure I couldn't tell you.

Q. (By Mr. CARMODY.) May I ask at this point on these export shipments, have you seen them packed?

A. Yes.

Q. Do they require special packing for export?

A. Usually they do, yes; especially if they are going
754 beyond the boundaries of the United States. They are especially crated up and reinforced with steel bands around them and also stenciled on there, "To export", or "For export", or something, to some export company in Chicago, I believe.

Q. And all carry the export stencil?

A. Yes.

Q. (By Mr. PATTERSON.) Now, what is the fact as to whether or not the Fruehauf Trailer Company, on a sale made through its factory branch at some point outside the State of Michigan, ofttimes takes in something in trade?

A. Oh, that happens frequently.

Q. And what happens to those trade-in items occasionally?

A. They are usually brought back to the plant, and if they are worthless, which they are in many cases, they are scrapped. And in other cases, if they are of some value, they are reconditioned and sold as such, as reconditioned units. We have a department over there which is known as the on-hand department.

Q. As what?

A. On-hand department.

Mr. CARMODY. I still don't understand that word.

The WITNESS. On-hand department. That means used units that have been reconditioned.

Q. (By Mr. PATTERSON.) Do you remember Mr. Vosler one time describing to a group of employees what this company had taken in in trade?

755 A. Yes. I remember that distinctly, and I think a good many fellows here will also. He spoke on that at three places in the shop, at one time—not at one specific moment, but to three or four different groups in the shop.

Q. What did he say they had taken in in trade?

A. He was illustrating what they had taken in in trade, telling how thoroughly they set out to accomplish a goal to get sales, and how close they had hewed to the line in their policy—that they had taken in at one time a used fire engine and at another time a jackass in putting across a deal to a customer down South; that is, in St. Louis.

Q. So that this company, in selling in other States, frequently not only got cash but they got used trailers and used fire engines and what not sent in here to Detroit?

A. Absolutely.

Q. In the performance of your work in the service department have you ever been called upon to disassemble a trailer job for shipment, that had already been assembled?

A. I was never directed by my foreman or my supervisor, I might say, but there has been a lull in the work at the plant when I would rather find some work for my men to do than send them home. So, consequently, I contacted the shipping department, and they frequently asked me if I could spare some men, and in this case and in other cases I could spare some men if I did not have much to do,

756 and in those cases we assisted them in knocking down and crating various jobs for various parts of the country.

Q. (By Mr. CARMODY.) That work of disassembling was normally done in the shipping department and not in your department?

A. Yes.

Q. It was not a service department responsibility?

A. No.

Q. Was it a shipping department responsibility?

A. Yes, it was.

Q. (By Mr. PATTERSON.) About how many trailers per day did this company build?

A. Would you mean complete units or chassis?

Q. Complete units first.

A. At the present?

Q. Well, at the time you were discharged.

A. Well, I knew their schedule on chassis's was around 30 per day, if I remember correctly; but as far as the complete

body jobs are concerned I could not give you any figures on that.

Q. I see. Now, do you know what the practice of this company is when an out-of-State customer comes in here to drive his own trucks away, how they handle the license plates or tags?

A. Well, frequently a customer comes unprepared to drive away his unit with his own tags. He perhaps hasn't
757 got the correct weight slip, or maybe the job has not been weighed, or maybe he is going to alter the job before he can get a license for it; so we have a provision there where a customer in that predicament would be furnished by us with a temporary license plate, as I recall, and upon getting to his destination he would return the license plate and we would refund the money, whatever it was. I think it was $5.00, to be held until the plate was returned.

Q. He would put up a deposit?

A. Yes. I have heard of the transaction taking place.

Q. He would send the plates back and his deposit would be refunded?

A. Yes.

Q. Do you know a number of instances where that occurred?

A. Well, I had heard a conversation in the shipping department where a customer was told by the manager that he was out of luck—where the manager was told by the customer that he was out of luck because he did not have any license plates.

Q. Now, Mr. Peterson, when did you join the union?

A. I was one of the charter members of the local. My name did not happen to appear on the charter, but I joined among the first.

Q. And you have been a member of the union ever since?

A. Yes, sir.

Q. By the way, do you remember when this man
758 Martin came into the plant?

A. It was not long before I was conscious of his existence.

Q. Do you remember about when he did come into the plant?

A. I couldn't mention any certain time.

Q. Well, can you say by months or years?

A. Oh, it has been a year or a year and a half that he was there, at least, I would say.

Q. The fact of the matter is he was hired before the present superintendent, Mr. Halpin, was hired?

A. Oh, yes.

Q. But he was hired after the union got started, wasn't he, if you know?

A. Well, I couldn't tell you that.

Q. All right. Now, do you know what department Martin was in when you first discovered he was there?

A. He started in the maintenance department.

Q. Did he ever work in any other department?

A. Oh, yes.

Q. Where did he go from the maintenance department?

A. He went to the assembly floor.

Q. And was he on the assembly floor for a while?

A. Yes.

Q. And then where did he go?

A. He was transferred to my department.

Q. And when was he transferred to your department?

759 A. Oh, within a month I think—before I was dismissed. About a month before, I believe.

Q. So that at the time of your discharge the detective Martin had been transferred into your department?

A. Yes, sir.

Q. (By Mr. EDWIN S. SMITH.) How long had he been in the assembly department?

A. He wasn't in there long. I don't think he was in there more than a couple of months at the most.

Q. A couple of months, you would say?

A. I would figure something like that, yes.

Mr. EDWIN S. SMITH. Well, now, if I may interrupt the proceedings just for a moment, this seems to throw some additional light on Martin's connection with the plant which I did not get from Mr. Vosler's testimony. I understood Mr. Vosler to say in response to a question which I put to him that this man was discharged from the maintenance department and from the factory because he was an inefficient maintenance man. I would like to give you a chance to correct that.

Mr. VOSLER: If I said he was in the maintenance department all the time he was there, I did not intend that, because he wasn't.

Mr. EDWIN S. SMITH. Well, just to clear the record a little further: Why was he transferred to the assembly department?

Mr. VOSLER. I don't know offhand. I expect that
760 it was during this dull period, however, during the summer, that he was transferred out of the maintenance department.

Mr. EDWIN S. SMITH. His inefficiency as a maintenance man, to which you have testified, was not sufficient to have you wish to have him transferred to the assembly department?

Mr. VOSLER. Apparently not.

Mr. EDWIN S. SMITH. And what sort of a record did he have in the assembly department?

Mr. VOGLER. I don't know.

Mr. EDWIN S. SMITH. Do you know why he was transferred to the service department?

Mr. VOGLER. I don't know.

Mr. EDWIN S. SMITH. During the period that he was in the service department or the assembly department, were you receiving any reports through the Pinkerton agency as a result of his activities in the plant?

Mr. VOGLER. Yes, sir.

Mr. EDWIN S. SMITH. And the reports were of a character similar to those received while he was in the maintenance department?

Mr. VOGLER. Yes, sir.

Mr. EDWIN S. SMITH. That is, reports on the union activities of the men?

Mr. VOGLER. Yes.

Mr. EDWIN S. SMITH. All right.

761 Chairman MADDEN. Did those reports relate to Mr. Peterson, this witness?

Mr. VOGLER. I don't recall whether any of them did. I don't just remember now whether his name was mentioned or not.

Chairman MADDEN. You said that he did report about having been at our board's office?

Mr. VOGLER. Yes.

Chairman MADDEN. And having seen Mr. Peterson there?

Mr. VOGLER. He did that, but I mean as far as anything that went on at the plant is concerned, I don't recall.

Chairman MADDEN. Go ahead. Let us get along.

Q. (By Mr. PATTERSON.) Mr. Peterson, did you ever have a conversation with Mr. Halpin about your union connection?

A. Well, I have had various conferences with Mr. Halpin in regards to that.

Q. About when was the first one?

A. Well, the first contact I had with him was about October last year.

Q. And how did you happen to discuss the matter with him at that time?

A. Well, he called me up on the phone and asked that I come to his office, which I did.

Q. Did you go?

A. Why certainly.

Q. Will you give the Board the substance of that conversation?

762 A. Well, the first thing he told me was—I will quote Mr. Halpin's own words as nearly as I possibly

can. I wrote it down here to be certain I would make no mistakes in it. I quote Mr. Halpin in saying the following: "Mr. Peterson, I have made observations of you and you seem to me to be outstanding among the men. I have made inquiries of your abilities and qualifications and find you to be good timber for a better position."

Well, naturally, I felt quite elated about that, having spent eight and a half years in the plant. I thought I was going to be raised, but he added, "You are a member of the local here, are you not?" I replied, "Yes, I am corresponding secretary." Quote, "Well, what I have to say must not go beyond the confines of this room, do you understand?" "Yes", I replied, "You may speak in confidence."

"Now, Peterson, I understand you carry a lot of influence among the men. You are well liked and have many friends." I agreed and said, "Yes, I have many friends." "Now, what I want you to see is that this local does not attain any great strength, and I will see that you are taken care of."

Q. (By Mr. KLEIN.) When did you write this down?

A. The other night.

Q. Can you give it from your memory?

A. To be frank with you, I wrote it last Friday night.

Q. You did not write it when it happened?

763 A. No. But would you want to argue further on that?

Mr. KLEIN. No. I just wanted to ascertain the fact about when you wrote it.

Mr. PATTERSON. Is there any question about when you wrote this down?

The WITNESS. I told him I wrote it Friday night, but if you want the facts on that I will be glad to discuss it.

Mr. KLEIN. I just wanted to know when you wrote it down.

Mr. PATTERSON. I would like the record to show at this moment that likewise the statement with which Mr. Yoder refreshed his recollection was not made at the time of the various occurrences that he related in that statement.

Chairman MADDEN. It did not purport to have been.

Q. (By Mr. PATTERSON.) Did he say anything further to you at that time, Mr. Peterson, about the union?

A. Well, as I have it here and as I, of course, know anyway, he told me that he wanted to see the union gain no great strength and wanted me to get out of it, and in that same conference he told me how he had successfully broken up unions elsewhere.

Q. When did he come into the plant?

A. Well, he has been there, I guess, around a year and a half.

Q. I see.

A. And possibly more.

Q. (By Mr. EDWIN S. SMITH.) Did he tell you where he had successfully broken up unions?

A. No, he did not specify any certain points.

764 Q. Did he make any comment about his prowess elsewhere in other fields of activity?

A. Oh, yes.

Q. What did he say?

A. That he was a prominent church member; he belonged to different sororities and lodges. He even ran for mayor, I believe, in Saginaw.

Q. What did he say about that?

A. Well, he considered he had not done so bad. He had come in in third place, but he did not say there were only two other candidates running.

Q. Was anything else said at that time in that conversation about the union activities?

A. No, not of any vital importance.

Q. When did you next talk to him about the union?

A. This was about a month or two months later. I believe it was in March, I believe it was, or in November—yes, in November.

Q. (By Mr. CARMODY.) When was this first conversation?

A. In October.

Q. In October 1934?

A. Yes, sir.

Mr. CARMODY. All right.

Q. (By Mr. PATTERSON.) What was the occasion for the second conversation with Mr. Halpin?

765 A. Concerning union activities again.

Q. Where was the conversation—in his office?

A. I was called to his office again.

Q. What, if anything, did he say at that time, about the union or about your connection with it?

A. Well, he wished to stress his point, I presume, that he told me that he considered I would never get nowhere in the union and he advised me to get out of it. He said nobody ever got anywhere in a union. He mentioned again how successful he considered he was, how he had gotten that way by his own initiative and courage and determination and one thing and another, and he laid a lot of stress on individualism. He made a remark at that time, he said, "Now, I don't care if Mr. Patterson's children are starved", he said, "as long as mine are taken care of."

Q. Who did he mean by that?

A. Mr. Patterson is a gentleman we had in charge of the planning department. His office was next to Mr. Halpin's.

Mr. KLEIN. He did not mean you, Mr. Patterson.

Mr. PATTERSON. No, I am quite sure Mr. Halpin did not refer to me.

Mr. KLEIN. No, I am quite sure of that.

Q. (By Mr. PATTERSON.) Did Mr. Halpin at that time say anything about changing your job with the company?

A. Yes, he did make a remark in connection with
766 my leaving the union. He asked me how I would like to have Frank Shearer's job, that of a travelling mechanic. I refused the job because having—buying a home here, and having friends and relatives and one thing and another, and a family, I did not consider it profitable or congenial to be out on the road taking trains to various parts of the country day and night, and going to various parts of the country.

Q. Did he suggest anything else than the travelling job?

A. Well, they were contemplating opening various branches, one in Long Island City and one in Philadelphia, and he asked me if I would consider either one of those positions, as taking charge of the service in those branches.

Q. (By Mr. EDWIN S. SMITH.) Was that to be at an additional salary, Mr. Peterson?

A. Well, I imagine it was understood to be that, although he did not tell me that.

Q. (By Mr. PATTERSON.) He left the impression that he was offering you better jobs, did he not?

A. Yes, sir; certainly.

Q. Well, now, did he make any further comment about the company's attitude regarding the union?

A. Well, he told me that the company would not tolerate a union in that plant, that they figured they were better prepared to stand court litigations, that they could take the fight and stand it longer than we could, and he also
767 said the plant would rather close its doors than give in to the local or to the union.

Q. Did you have any further conversation with Mr. Halpin regarding the union?

A. Well, I disliked very much having to give up my affiliations with the union, but I still had to consider that I was under obligations to my family as well. I also was very much indebted in the purchase of a home, so that when he demanded that I leave the union I had to come to a conclusion where I had to decide one way or the other.

Q. Well, he made that demand when?

A. The final demand was in June or July of this year.

Q. Yes.

A. Of course, there had been demands made all along the line at previous times. Maybe I should not say "demands." At first it was naturally requests of that nature.

Q. At that time were you an officer of the union?
A. Yes, sir.
Q. What office did you hold?
A. Recording secretary.
Q. How long had you been recording secretary?
A. I think I only attended the second, or maybe the first, meeting, when I was elected.
Q. All right. What happened at the union meeting along about the 8th of July?
768 A. Well, there had been considerable of the brothers laid off—fired, rather, for union activities, and we decided upon a special meeting to discuss just what procedure we would take along the lines of trying to do something about it, to see what we could do to help those fellows that were fired and possibly to strengthen our own position, if necessary—if possible.
Q. So the union had a strike meeting, didn't it?
A. Yes, sir.
Q. Was a strike vote taken?
A. Yes.
Q. Did you know at that time and do you know now what the result of that vote was?
A. Yes, sir.
Q. How many votes were cast?
A. There were somewhere in the neighborhood of 100 votes.
Q. And do you remember——
A. Oh, pardon me. I will withdraw that. There were 67 votes cast.
Q. 67 votes cast?
A. Yes, sir.
Q. How many of those were in favor of a strike?
A. There were 35 in favor of the strike.
Q. And 32 against a strike?
A. Yes, sir.
769 Q. And the rules of your organization required that two-thirds——
A. Yes, sir.
Q. (Continuing.) Be in favor of a strike?
A. Yes, sir.
Q. So that you had a majority but not the two-thirds?
A. Yes, sir.
Q. Now, how many members of the union would you say were present at that strike meeting?
A. Well, I would say in the neighborhood of 100 and possibly more; maybe 110.
Q. What was the reason behind the taking of the strike vote?

A. Well, we considered that a rank injustice had been done to our fellow workers who were discriminated against, and we figured something should be done about it.

Mr. KLEIN. That is the witness' conclusion, that they were discriminated against. That is his idea about it rather than——

The WITNESS. We are basing this on facts.

Q. (By Mr. KLEIN.) As you understand them?

A. As I understand them.

Mr. KLEIN. Yes. Pardon me.

(Laughter.)

Q. (By Mr. PATTERSON.) Now, Mr. Peterson, the reason this strike vote was taken was because the union felt that these men had been wrongfully discharged because of union activities?

A. Absolutely.

770 Q. Now, then, after the meeting was over that night did you have a conversation with the officers?

A. Yes; I did.

Q. With whom did you have that conversation?

A. With President Steve Sprytzer.

Q. And at that time he had already been fired, hadn't he?

A. Yes, sir.

Q. Who else?

A. Vice President Art Hillman.

Q. He had also been fired?

A. Absolutely.

Q. Who else?

A. And the Honorable John Martin.

Q. Just the four of you?

A. Absolutely.

Q. Did anybody else hear the conversation that you are about to relate?

A. No, sir.

Q. What did you say in that conversation?

A. I purposely set a trap. I had been convinced in my own mind previous to this time that Martin was the undercover man there, but, as I had told Mr. Halpin before this time that I would resign as soon as I could do so conveniently and graciously, being at this officers' meeting had proven that it would be a good opportunity for me to

771 make that announcement in such a way that the company's own representative could find out that I had made my resignation. I done that for a purpose, not only that the company would find out through their representative, but where the company did find out I felt I would know very shortly thereafter. And it happened.

Q. What did you say?

A. I made the remark that I had to resign because it meant either my resignation or my job.

Q. That is, resigning from the recording secretary's job?

A. Yes, sir.

Q. Did anybody hear that remark except Mr. Sprytzer, Mr. Hillman, and Martin?

A. No, sir.

Q. And what happened?

A. The next morning I was called into the company's office, and he greeted me with a smile. He said, "Mr. Vosler is very pleased to learn of your change of attitude of last night." I replied, I said, "Yes, I gave it up." And he replied, and he says, "Now you are one of the Fruehauf family."

Q. What, if anything else, was said? Had you previously discussed with Mr. Halpin the wage rate that you were receiving?

A. Yes.

Q. Did he say anything about that on the morning of July 9th?

A. Well, on previous occasions I had asked him for an increase of pay, not only for myself but for the men
772 working in my department. They were all underpaid, as I stated, and I asked for increases for them as well.

Q. Did he say anything about it on the morning of July 9th?

A. Well, when I came in and explained to him I was receiving less money than I had two years previously, then he said, "I think we can do something for you."

Q. Then what happened in your next pay check, Mr. Peterson?

A. I received an increase of 5¢ per hour.

Q. And in the following pay check, what happened?

A. They deducted 1¢ per hour for the total of one hundred hours, that was deductible as a timekeeper told me—deducted by Mr. Vosler, who had turned down a 5¢ raise and had advocated a 4¢ raise instead.

Q. Now, then, Mr. Peterson, if you needed a man on the job in your department you would requisition the employment manager?

A. Not direct. I would let my needs be known to my superior foreman, and he would in turn have a man sent back to me and I would examine him and if he was found satisfactory for employment, as I saw fit, he was hired. If he wasn't, he wouldn't be. That was all.

Q. Were you given any instructions by your foreman or by the superintendent as to an inquiry that was to be made of applicants for jobs?

A. Oh, yes.

773 Q. Who gave you the instructions?

A. My foreman gave me my instructions.

Q. Who was your foreman?

A. Clayton Rivenbark.

Q. What was the instruction?

A. My instruction was, among other things, to ask him—was to ascertain whether or not he belonged to a union or believed in unionism.

Q. Yes; and if he did?

A. Why, he would be objectionable.

Q. Was it about that time, along about in July, when they transferred the stool pigeon to your department?

A. Yes; along about the latter part of June, I believe, or possible the first part of June.

Q. Did any of your foremen or supervisors or superintendents say anything to you about the union between July 9th and the date of your discharge?

(No answer.)

Q. Nothing said?

The WITNESS. Will you repeat the question, please.

Q. Was anything said to you by your foremen or supervisors or superintendent about union activities between this occasion on July 9th that you have just related and the date when you were discharged?

774 A. Well, there was nothing specifically announced or dictated to me what policy I should follow. The understanding was, as they saw, that I had resigned from the union.

Q. So that they made no further comment about it?

A. No, sir.

Q. Now, then, do you remember that you were requested to come to the office of the National Labor Relations Board in the National Bank Building?

A. Yes, sir.

Q. What was that date?

A. That was the—just a minute. The 27th I believe it was. September 27th, I went there in the evening of September 27th.

Q. Along about eight o'clock in the evening?

A. Yes, sir.

Q. And who came with you as you remember, or did you come alone?

A. I came alone. I believe I met one of the other fellows, Lenny Chaloux, I believe it was, in the lobby; or there was one of the fellows I met in the lobby that went up in the elevator with me. Or possibly it was Steve. I don't remember.

Q. And after you were there a short while, what happened?

A. Why, brother Martin made his appearance.

Q. Then you related some of the facts concerning which you have testified to me, did you not, that evening?

A. Yes, sir.

Q. And what is the fact as to whether or not we
775 were in a separate room where Mr. Martin was seated; is that right?

A. Yes, sir.

Q. And after completing your statement I had Mr. Martin come into my room, did I not?

A. Yes, sir.

Mr. CARMODY. You have not quite established the fact that you were the one who sent for him, or you were the one who received him, Mr. Patterson. I don't think the record is quite clear as to who he talked to in the office. Do you want to put that in the record?

Mr. PATTERSON. Yes; I do want to put that in the record.

Mr. CARMODY. Who you are referring to?

Mr. PATTERSON. Yes. Mr. Peterson talked to me in my office in the offices of the National Labor Relations Board, and after completing the statement that Mr. Peterson had to give, Mr. Martin came into my office where he made a statement to me.

Mr. CARMODY. All right.

Q. (By Mr. PATTERSON.) Now, you went back to work the following morning?

A. Yes, sir.

Q. What happened to you on the 10th of October?

A. Well, I went to work as usual and I had worked until about 9:30 or somewhere along that time and my superior foreman came over and told me, he said he had a
776 hard job for me. I don't know exactly what remark he made, but I think I said, "Well, the harder the better." I said, "Let's have it." I thought it was a job pertaining to the work at hand, so when he handed me the pink slip I was shocked for a moment, not knowing what it was all about. "Well", I says, "that is quite all right. I think I understand what it is all about." I knew conscientiously and I was positive that Martin had seen me in the office and this was the aftermath of it.

Q. What was the reason on your slip for your discharge?

A. "Services unsatisfactory."

Q. After eight years with this company?

A. Eight and a half years.

Mr. PATTERSON. I think that is in evidence, is it not, that pay-off slip? Do you have the exhibits? I will check that.

Mr. CARMODY. There was such a pay-off slip, but I don't remember whose name was on it.

Mr. PATTERSON. I am quite sure that that was identified during the cross-examination of Mr. Vosler.

Mr. CARMODY. Yes.

Q. (By Mr. PATTERSON.) Had any of your foremen or the superintendent ever told you that your work was unsatisfactory?

A. No, sir. I have always been complimented on it.

Q. Did Mr. Halpin or your foreman ever tell you that you were belligerent?

777 A. No, sir.

Q. Did your foreman or Mr. Halpin ever tell you that you were hard to handle?

A. No, sir.

Q. Didn't you always do the job they gave you to do?

A. I could produce books in evidence showing that my jobs in the general run of things were done before schedule.

Q. Yes. Did the foreman say anything to you about a mistake that you had made a week or so before?

A. Yes.

Q. Tell the Board what that mistake was.

A. Of course, I did not learn of this mistake until after it had happened about a week or ten days or maybe two weeks.

Q. Yes?

A. Ordinarily I get my orders from the planning department as to what I shall do each day. Now, my orders specifically mention the serial number of each job, the J. B. number of each job, and what is to be done on each job. Now, when I have that order before me I can carry out the order and do it correctly with the minimum number of mistakes as well as anybody. But on this certain day that this job was done I did not have a written order. I had a verbal order by word of mouth.

Q. From whom?

A. From my foreman. About 4:30 in the afternoon he told me—he says, "Pete, will you have the tires

778 changed on two J. B."—I forget the correct number, he said, "over in the yard?" I said, "Sure, I think I can work it in this afternoon." So he sent the tires over to me and I directed two men to go out in the yard and change the tires on two J. B.—whatever the number was. And they went out and done it, and the incident was out of my mind. And, of course, when this was brought up, because I had made a mistake in the tires, I wanted to find out why and I wanted to find out because I had no written order. I had had nothing but what my foreman told me.

He told me what job it was to be done on, but, after further investigation I found there were several jobs he built on that same J. B. The serial number was not given me as to what job to change them on. I had to use my own judgment.

Q. What happened? You had to change the tires on more than one trailer?

A. There was more than one job built under this number, and me, not knowing that, my men changed them on the first job they came to.

Q. What did they change?

A. Well, I don't know exactly what it really entailed in expense, or anything, but it meant taking off a ten ply tire and putting on a twelve ply tire in exchange for it, and after one job we found out the mistake and we corrected it by changing back the tires on that one job. So there was only one job we sent out with 12 ply tires instead of
779 10. The other job that we changed back entailed a half hour's labor to change it back to what was actually ordered.

Q. So what actually happened was your men put a set of 12 ply tires on a trailer that went out to a customer who paid for a 10 ply tire instead of a 12 ply?

A. Yes, sir.

Q. Do you know what the difference in price between ten and 12 ply tires is?

A. I would not know in that size. In the ordinary types of cars we drive I could, perhaps, make an estimate.

Q. Do you know how many tires were on that truck?

A. There were four.

Q. Now, did your foreman on the day he fired you say anything about that mistake?

A. Most decidedly.

Q. What did he say?

A. When he handed me the slip he said he hated to do it but he said, "It is not because of that tire change."

Q. Did you subsequently talk to Mr. Halpin?

A. Well, yes. I felt indignant over the fact that on my pay-off slip I had been classified as an unsatisfactory workman, after investing eight and a half years of my life in that plant.

Q. Yes?

A. So I went in to see Mr. Halpin about it and I said, "Will you kindly explain the meaning to me of this
780 'unsatisfactory' part." He says—"Well," he says, "You made a mistake, didn't you?" I says, "Yes." I didn't find it out until this morning, which I don't think I should be wholly blamed for." I says, "Don't you ever

make mistakes in your routine of business also?" Well, he admitted he had. "Well," he says, "It is beyond me. You made the mistake and that is all there is to it." I says, "Listen, Mr. Halpin, let's keep from beating around the bush. You know as well as I know there are other reasons for your firing me, are there not?" And he says, "Possibly so, but we could dig up other technicalities if we so wished."

Q. What is the fact as to whether Mr. Halpin and Mr. Larson both stated that you should not pay any attention to that "unsatisfactory" part on your pay-off slip?

A. Yes. In connection with that conversation with Mr. Halpin, after we had had that little argument, he said, "Well, pay no attention to that 'unsatisfactory' part." He says, "I will be glad to give you a recommendation any place you want to go," and, extending his hand to shake hands, he said, "That is all I have to say."

Chairman MADDEN. Mr. Patterson, we will recess for five minutes.

Mr. PATTERSON. Thank you.

(Whereupon a short recess was taken, after which the following proceedings were had:)

781 Q. (By Mr. PATTERSON.) Mr. Peterson, you were recording secretary of the union in July prior to this evening when you resigned, were you not?

A. Yes, sir.

Q. And as such recording secretary, would you know what the union membership was at that time?

A. I would know to a fairly accurate degree.

Q. How many members were in the union on July 1st, about?

A. Would you mean active, paying members?

Q. Active, paying members.

A. Well, the real active, paying members, I would say, totaled, I believe, definitely 177, with an additional 100 or so potential members, that is, members who at one time or other paid dues or who did not feel safe in going down to the meetings or who, perhaps, did not have the money on the line, or some things like that.

Q. Now, then, the members of this union were production and maintenance employees, weren't they?

A. That is all, entirely.

Q. None of the office or clerical force were members?

A. No, sir; no, sir.

Q. None of these mechanics and salesmen at the various branches were members, were they?

A. No, sir.

Q. Now, along in June and July of this year, when the union had 175 actual members and another——

782 Mr. KLEIN. That isn't the testimony.

Q. (By Mr. PATTERSON.) What did you say?

A. 177. Wasn't that right?

Mr. KLEIN. I don't know.

The WITNESS. I think I stated that.

Mr. CARMODY. 177 is what you said.

Q. (By Mr. PATTERSON.) 177 paid-up members and another possible 100 who had defaulted. How many employees did this company employ in the production and maintenance departments?

A. Well, I don't think—of course I have no definite figures. I don't see any reason why they can't find out from a better source than me, but I don't think they have over 400, or I don't think that many employees, that is, I don't mean bellhops or telephone operators or salesmen or people working outside the factory or people who were not eligible for our mion. I mean just the factory workers, production workers.

Q. What you refer to are those employees actually engaged in production and maintenance as distinguished from stenographers, bookkeepers, clerical help, salesmen, and mechanics out in the field?

A. Yes, sir. We never made a point to represent them at all, only just our own forces.

Q. Were you present the night the strike vote was taken?

A. Most assuredly I was.

Q. Did Mr. Martin make a speech?

783 A. Yes, he did.

Q. For or against taking action to retaliate against these discharges?

A. In the negative.

Q. He was against the strike?

A. Yes, sir.

Q. Do you remember when Mr. McDonald addressed the meeting that evening?

A. Yes, sir.

Q. Was it before or after the strike vote was taken?

A. It was after the strike vote.

Mr. PATTERSON. You may cross-examine.

Cross examination

Q. (By Mr. KLEIN.) Now, Mr. Peterson, during your testimony you referred to some of the orders being so-called special orders of various customers and distinguished those from stock jobs. Wasn't the special nature of the order generally in reference to the body, the size of the body and the character of the body; did it have to do with the length of the frame?

Mr. PATTERSON. Will you indicate—were you answering when you were shaking your head?

The WITNESS. Well, will you please state that more clearly?

784 Q. (By Mr. KLEIN.) Well, on a special order job, so called, that you have been testifying to, the material was made right up in the factory there for the job, wasn't it?

A. A majority of it; not all of it, you understand.

Q. Yes, and a special job may have been very much like a stock job except sometimes the frame was a little longer or wider, depending on the nature of the special job.

A. Oh, there may be many variations between a stock job and a special job.

Q. And there might have been a variation in the body, special features that were built?

A. Yes.

Q. But that was built, the special features were built right in the plant there, and it is in that respect a special job as compared to a stock job that was a standard size body and a standard size frame?

A. Yes.

Mr. KLEIN. That is all.

Chairman MADDEN. That is all.

Mr. PATTERSON. No further questions, Mr. Peterson.

(Witness excused.)

Mr. PATTERSON. Now, may it please the Board, in view of the testimony which has been offered in this case regarding the interstate nature of this company's business, I want at this time to renew the offer which was heretofore

785 made and ask this Board to receive in evidence the certified copies of the papers filed in the case of the United States of America against the Fruehauf Tractor Company and identified in this case as exhibit 1. I believe, may it please the Board, that the making of the charge which the indictment contains, the recitation of twenty-five specific interstate shipments of items, including not only trailers, but fifth wheels, couplers, axles, paint, lamps, and what not, is material and relevant evidence on the question of the interstate character of this company's business showing that it not only ships the ultimate finished product, the trailer, in interstate commerce, but that it also makes large shipments of various parts of trailers obviously designed for assembly at points outside the State of Michigan.

Furthermore, this indictment charges a violation of the Interstate Commerce Act and certainly we have here in these exhibits, these papers, marked "Exhibit 1"—we have here the clearest cut legal admission by this company and

particularly in view of the fact that it involves an interstate commerce transaction, or 25 of them, rather,—that the company's admission in the record of that case and now certified in this exhibit under the seal of the court constitutes such a legal admission that this Board should receive it.

Chairman MADDEN. Well, Mr. Patterson, we went into all that on Wednesday and we ruled on it, and I had supposed that it was taken care of long before this. Why hasn't it been?

786 Mr. PATTERSON. Well——

Chairman MADDEN. What we ruled was that the fifth count, or, I mean the part of the fifth paragraph of each count of this indictment which recited that the company shipped a certain described shipment from Detroit to such and such a place in another State was admitted here and now by the company, that is, the truth of that recital is admitted here and now by the company.

Mr. PATTERSON. Well, I mean——

Chairman MADDEN. That is all that the legal admission would amount to. The opinion of another Department of the Government or of a grand jury or of a district attorney can't add anything, as I can see it, to the legal effect of the thing here. We have to have an opinion too, and if this case goes into court, the court will have to have an opinion too.

Mr. PATTERSON. That is true.

Chairman MADDEN. And they will have to base their opinion on those facts. Now, we want those facts, but we do not want the rest of the indictment. Now, can't we get straight on that?

Mr. PATTERSON. Well, in view, Mr Chairman, of the evidence which has been developed since the previous offer of this exhibit in evidence, I for the purpose of the record want to renew the offer that the entire exhibit be included—

787 that is, it be accepted in evidence as an exhibit. I would like to point out that it is more than an opinion of the grand jury; it is more than an opinion of the district attorney. It is an admission by this respondent because of the plea.

Chairman MADDEN. Who is again here in court admitting the same thing.

Mr. PATTERSON. That is true.

Chairman MADDEN. The offer is denied.

Mr. PATTERSON. May I note an exception to the Board's ruling?

Now, with the blanket offering of all the other exhibits which have here been identified, as well as all of the testimony both on direct and cross-examination that was offered

in support of the motion to dismiss—I want to make sure that all that evidence is in the record on the issues raised by the complaint and the answer.

Mr. KLEIN. Well, subject to the objections to those exhibits that the Board ruled should not go in.

Mr. PATTERSON. Well, there was only one that was excluded.

Chairman MADDEN. I believe there was only one.

Mr. KLEIN. That is, I am willing that everything should be treated as offered, but if the Board excluded it, it should not be admitted.

Mr. PATTERSON. Here is one that was tentatively offered but not even marked.

788 Mr. KLEIN. To exhibit 1 the objection was sustained.

Mr. PATTERSON. That is right.

Mr. KLEIN. Exhibit 2 is the first book, "Good Business."

Mr. PATTERSON. That is right.

Mr. KLEIN. Exhibit 3 is the "Ten Point Dealer" program.

Mr. PATTERSON. Right.

Mr. KLEIN. 4, 5, 6, 7 and 8 are admitted. 9 to 12 are admitted. Exhibit 13 was not offered.

Mr. PATTERSON. What is that?

Mr. KLEIN. That is the newspaper clipping. You had it identified, but it wasn't offered.

Mr. PATTERSON. Oh.

Mr. KLEIN. No. It was the Detroit Times article.

Chairman MADDEN. Which was not admitted?

Mr. PATTERSON. I withdraw the offer of exhibit 13.

Mr. KLEIN. Which was not admitted, as the case might have been. Exhibit 14 was this lay-off slip, Peterson's lay-off slip. I think that was offered.

Mr. PATTERSON. Yes, it was.

Mr. KLEIN. Exhibit 15 I think was offered.

Mr. PATTERSON. Might we look at these exhibits?

Mr. KLEIN. And 17, 18, 19, and 20 were offered.

Mr. PATTERSON. And received?

Mr. KLEIN. And received. And I think that is all, is it not?

789 Mr. PATTERSON. That is right, just 20 exhibits.

Mr. KLEIN. Yes. Now, as I understand it, all the testimony on the motion is to be treated as though it were incorporated into the record in the hearing on the answer, and all the constitutional objections as raised by that motion are to be treated as raised here on the hearing.

Chairman MADDEN. That was so ruled before.

Mr. KLEIN. Yes, sir; I so understood it, sir. Are you through, Mr. Patterson?

Mr. PATTERSON. With the understanding that Mr. Klein and I may dictate into the record here that portion of paragraph 5 of exhibit 1, the complainant rests.

Mr. CARMODY. On each of the counts?

Mr. PATTERSON. On each of the 25 counts.

Chairman MADDEN. And that the respondent admits the truth of the recital of those facts?

Mr. KLEIN. Yes, that there were shipments as recited in those paragraphs.

Chairman MADDEN. Yes.

Mr. KLEIN. My attention was called this noon or during the recess to the fact that I had used the words "unrestrained laughter" during this morning's hearing, and it might have created the improper impression that this was an unruly or a riotous sort of a proceeding, and if I have given any such impression I want to correct it. There was some
790 levity at various times, but that it was riotous or threatening to any person or my client, I want to correct that impression. It was brought to my attention by certain parties and I want to correct that impression.

Chairman MADDEN. Very well.

Mr. KLEIN. Yesterday Mr. Carmody asked if Mr. Halpin, the factory superintendent, could be made available and I told him I would see if he could be made available. This morning it developed that the facts that Mr. Carmody wanted to examine Mr. Halpin about were brought out from other witnesses, and the question whether the company wanted to offer him or anyone else at this stage was purely up to it, as it saw fit to do. And at this time we are prepared to rest on the testimony.

Chairman MADDEN. I think it is only fair to say, Mr. Klein——

Mr. KLEIN. Yes, sir.

Chairman MADDEN. (Continuing.) With reference to your statement about Mr. Halpin that your attention was called to the fact that many witnesses have testified to conversations with Mr. Halpin, and that the testimony of those witnesses stands uncontradicted by other witnesses, at least in case the company does not call Mr. Halpin.

Mr. KLEIN. Well, we feel that the points in real controversy here have been fairly issued, and that it would be just a reiteration of the testimony of other witnesses to go over those points. I think it would unduly delay the proceedings.

791 Mr. CARMODY. If I remember correctly, I did ask yesterday for some additional material about production and personal records. If the material is available I think we might be glad to receive it. If it isn't, rather than

delay the proceedings any further—they are already pretty long—I would say we can get along without them; at least, I can.

Mr. KLEIN. Of course, the production figures we couldn't get by today. That is quite a job.

Mr. CARMODY. I see.

Mr. KLEIN. But we have this insurance blank. I don't know whether it would be of help. (Mr. Klein hands document to Mr. Carmody.)

Mr. EDWIN S. SMITH. Did you bring in figures as to the number of people on the pay rolls in the various departments during the period covered by these matters that have been discussed here? As I recall that was one of the suggestions made.

Mr. CARMODY. That was the thing I was most interested in.

Mr. KLEIN. Well, perhaps I can get it and with Mr. Patterson—he can check it, and if he thinks it is proper we can send it down to the Board. You know, we have been having very late sessions, until a quarter to six, and the factory was shut down, but if it is agreeable Mr. Patterson and I can get that data, and if he is satisfied with the
792 correctness of it, we can send it down and incorporate it.

Chairman MADDEN. That has to do with production figures.

Mr. CARMODY. This is what I had in mind. There has been some testimony here to the effect that men were being hired at the very time that men were being discharged. It seems to me that if we knew how many men were actually at work in these various departments day by day during the period of this controversy, that is, during the period that these men were being laid off for one reason or another, or discharged for one reason or another, it might help us in our judgment as to whether or not the cause was one thing or another.

Mr. KLEIN. Oh, I think we can get that.

Mr. CARMODY. Of course, that should be related, if it is possible to relate it, to some standard unit of production.

Mr. EDWIN S. SMITH. Well, don't you mean that as to each of the departments that have been generally described here as assembly and maintenance——

Mr. CARMODY. That is right. That is right. The departments from which these men were laid off or discharged are the ones that I am interested in from the point of view of the number of men that they actually had at work. I assume that if you have employees whom you lay off because there is a shortage of work, you will call them back

to work before you hire new men, and if you hire new men
within a few days or few weeks after you lay those
793 men off without trying to get those men back, I assume you have either a very bad personnel policy or you have a disposition not to return those men to your employment. I am saying what is in my mind about this business of hiring and firing people and building harmonious relationships. That is why I am interested in those figures.

Mr. KLEIN. Those figures can be made available, and if Mr. Patterson wants to check them with me when they are obtained, I will get them.

Mr. CARMODY. They may not tell the whole story, but they may help clear up some of the difficulties.

Chairman MADDEN. Will you gentlemen come up here?

(Whereupon there ensued a discussion between the Board and counsel, which, by direction of the Chairman, is here omitted from the record.)

Mr. KLEIN. In view of the fact that there has been oral argument on the legal points on the motion, it is thought unnecessary at this time to again go into them at great length.

Mr. EDWIN S. SMITH. You mean it is so thought by you?

Mr. KLEIN. Thought by all of us, I assume.

Mr. EDWIN S. SMITH. Well, I simply think the record should make clear that the Board is glad to hear further oral argument if you want to present it.

Mr. KLEIN. Well, we will—we did have oral argument, a brief oral argument, and I imagine the validity of the act will be determined by the courts rather than by the Board.

794 Mr. PATTERSON. Might we not dictate this stipulation into the records? It might be done in five minutes.

Mr. KLEIN. I thought the reporter——

Mr. PATTERSON. See if this is all right: It is hereby stipulated and agreed by and between counsel for the complainant and counsel for the respondent herein that on the following respective dates the Fruehauf Trailer Company shipped property in interstate commerce——

Mr. KLEIN. No, no. Shipped property from Detroit to the points indicated.

Mr. PATTERSON. All right.

Mr. KLEIN. That is a perfectly legal conclusion. Let us have the facts and that is all. Let the court draw its conclusions.

Mr. PATTERSON. All right. Shipped property from its plant in the city of Detroit to the following destinations, the property other than trailer-tractors, being as follows: August 3, 1934, to Baltimore, Maryland——

Mr. KLEIN. Well, I think we ought to have the whole thing. My suggestion would be that you and I get a stenographer when the Board is not waiting and dictate the contents of this, and we can sign a written stipulation, and it won't take the Board's time and we will be sure that it accurately sets out the facts because the facts are set out in paragraph five, and it will save the time of everybody involved.

795 Mr. PATTERSON. All right.

Mr. CARMODY. I think that would be better if you can do that.

Mr. PATTERSON. All right.

Chairman MADDEN. Mr. Smith, the regular lawyers in the case who have been participating actively here have been given ten days in which to file briefs, either arguments on the facts or arguments as to the law, or both, and we want to extend to you, on the basis of your intervention, that same privilege, and we shall be very glad to have your brief.

Mr. HAL H. SMITH. Would the Board ask counsel to furnish us with copies of their briefs, and we will supply them with copies of ours.

Chairman MADDEN. Yes; after they are done. I mean, these briefs will not be exchanged before they are filed.

Mr. HAL H. SMITH. Yes.

Mr. KLEIN. Is one party to file briefs first or——

Mr. PATTERSON. No. We will file them simultaneously.

Chairman MADDEN. Within ten days.

Mr. KLEIN. Will we direct that to Washington, sir?

Chairman MADDEN. Yes.

Mr. HAL H. SMITH. And the ten days will run from today or from the receipt of the transcript?

Chairman MADDEN. I want it to run from today.

796 That ends the hearing, and the decision, when it is made, will be made from Washington, it is adjourned.

(Which was all of the evidence adduced or proceedings had on the hearing of the above-entitled matter.)

(Whereupon, at 4:30 o'clock p. m., the hearing was closed.)

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION OF FRUEHAUF TRAILER COMPANY TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR RELATIONS BOARD [1]

[No. 7291]

Filed December 17, 1935

To the Honorable Judges of the Circuit Court of Appeals for the Sixth Circuit.

Now comes Fruehauf Trailer Company, the petitioner above named, and respectfully shows:

1. The Fruehauf Trailer Company, petitioner, is a corporation duly organized and existing under and by virtue of the laws of the State of Michigan; that it is duly authorized to do business within the State of Michigan; that it has its principal place of business and office and resides and carries on business in the City of Detroit, Wayne County, State of Michigan, and has all of its manufacturing plants and conducts all of its manufacturing operations within the State of Michigan within the Sixth Judicial Circuit of the United States and within the jurisdiction of this Court.

2. Respondent is a Public Body known as the National Labor Relations Board organized and existing under an Act of Congress, Public No. 198 of the Seventy-Fourth Congress approved July 5th, 1935, and the members of said Respondent, National Labor Relations Board, consisting of J. Warren Madden, Chairman, John M. Carmody and Edwin S. Smith were appointed members of the board by the President of the United States in pursuance of said Act of Congress. The principal office of said Respondent, National Labor Relations Board, is in Washington, District of Columbia.

3. Respondent, National Labor Relations Board, through its acting Regional Director for the Seventh District at Detroit filed a complaint against the petitioner, Fruehauf

[1] NOTE.—This petition and the amendment thereto (p. 500, *infra*) have been separately printed and filed by Fruehauf Trailer Company, on January 2, 1936.

Trailer Company, case No. VII–C–1, on October 23rd, 1935, and another complaint, case No. VII–C–3, on October 29th, 1935, under the so-called "National Labor Relations Act, Public No. 198 of the Seventy-Fourth Congress, Approved July 5th, 1935", and the entire National Labor Relations Board conducted a hearing at Detroit and under the date of December 12th, 1935, filed its decision and issued its order requiring Fruehauf Trailer Company to cease and desist from performing certain acts and to affirmatively take other steps as is more particularly set forth in said order, all of which may be observed or performed by Fruehauf Trailer Company within the jurisdiction of said Sixth Circuit Court of the United States, Circuit Court of Appeals.

This Court has jurisdiction of this petition to review under Public No. 198 of the Seventy-Fourth Congress, Approved July 5th, 1935.

4. The Fruehauf Trailer Company has for many years last past been and during the time of the acts complained of by Respondent up to and including the date hereof was and is now engaged in the manufacture of trailers, semi-trailers, carry-alls, parts and accessories therefor.

All of the Fruehauf Trailer Company's manufacturing plants are located in, and all of its manufacturing operations are conducted in, the City of Detroit, State of Michigan. The employees covered by the complaint of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to its manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board. The said National Labor Relations Board purporting to act under the authority of the said Congress is without power, authority and jurisdiction to make any orders relating to or concerning such manufacturing operations or the employees employed therein.

5. That on or about October 3rd, 1935, United Automobile Workers Federal Labor Union No. 19375, an affiliate of the American Federation of Labor, purporting to represent certain employees of the Fruehauf Trailer Company, filed a complaint with the National Labor Relations Board for the Seventh Regional District at Detroit, Michigan, averring that six employees, to wit, Nicholas Trusch, William Weinmann, Arthur Beck, Leonard Chaloux, William Milne and Wollery Coonrod, were discharged and discriminated against by the Fruehauf Trailer Company because of their union affiliations and activities. A subsequent and like complaint was filed to include John L. Peterson. All of said employees were engaged in the production and manufacturing departments of the Fruehauf Trailer Company at Detroit, Michigan. Subsequent thereto, to wit, on October 23rd, 1935, and October 29th, 1935, National Labor Relations Board, through its acting director for the Seventh Region, at Detroit, Michigan, filed complaints, Nos. VII–C–1 and VII–C–3, based upon said union's charge, against the Fruehauf Trailer Company under Public No. 198 of the Seventy-Fourth Congress, Approved July 5th, 1935, averring that Fruehauf Trailer Company had engaged in alleged unfair labor practices and had discharged said employees and by so doing had interfered with the rights of said employees in violation of Section 8, subdivision 1 of the National Labor Relations Act, and had discriminated against them for Union activities in violation of Section 8, subdivision 3 of said Act. Said cases VII–C–1 and VII–C–3 were consolidated for hearing and decision by order of said Board.

Fruehauf Trailer Company thereupon filed a motion to dismiss said complaint in both of said cases, and thereafter delivered a copy of its proposed answer reserving all jurisdictional rights and renewing its motion to dismiss in said answer with the understanding that the same was to be filed only in the event of an adverse ruling upon the motion to dismiss, and your petitioner does hereby pray that said motion to dismiss and answer as filed in said proceedings be incorporated in and made a part of the record in this proceeding before this Court and made a part thereof.

The objections of the petitioner, Fruehauf Trailer Company, and the grounds for its motion to dismiss, among other grounds, were as follows:

(The grounds for the motion to dismiss are omitted. They appear at pp. 23–25, *supra*.)

Said motion to dismiss in case VII–C–1 was filed on October 30th, 1935, and in case VII–C–3 on November 1st, 1935, respectively, and on November 4th, 1935, before petitioner, Fruehauf Trailer Company, had been afforded an opportunity to be heard upon said motion said National Labor Relations Board did enter the following order:

"ORDER OVERRULING MOTION TO DISMISS

The respondent Fruehauf Trailer Company, by its attorneys, appearing specially for the purpose, having moved to dismiss the complaint in the above matter on the grounds that the National Labor Relations Board has no jurisdiction of the person of the respondent and no jurisdiction of the subject matter, and said motion having been duly considered and the Board being sufficiently advised in the premises, and it appearing to the National Labor Relations Board that the aforesaid motion is without merit.

It Is Hereby Ordered that the aforesaid motion of respondent be and it hereby is overruled, this 4th day of November, 1935."

overruling the motion to dismiss in case VII–C–1, but that upon the hearing of the full Board at Detroit on November 6th, 7th and 8th, 1935, the motions to dismiss were both renewed and forthwith denied by said Board, and after a hearing in said proceedings in which said Board members vigorously participated in the examination of witnesses in support of its complaint against Fruehauf Trailer Company, and at the same time attempted to act as impartial arbiters, memorandum briefs were filed, and on December 12th, 1935, a decision and order of said Board was filed and entered, although a copy of said decision was not served upon petitioner, Fruehauf Trailer Company, until eleven o'clock A. M., December 16th, 1935. A copy of said decision containing a statement of case, findings of fact, conclusions of law and order is set forth at full length in Exhibit A attached hereto and made a part hereof with the same force and effect as though set out at length herein. The portion of said decision constituting the order provides:

(The text of the order is omitted. It appears at pp. 58–59, *supra*.)

6. Your petitioner, Fruehauf Trailer Company, avers that said National Labor Relations Board in conducting said hearing and in entering said order was and is acting

without and in excess of its lawful power and authority and contrary to law. Your petitioner believes that unless a stay is issued by this Court, as is provided by Section 10 (g) of said National Labor Relations Act that said National Labor Relations Board will attempt, despite the prior filing of this petition to review, to file proceedings in another jurisdiction where neither its counsel nor officers reside which would subject petitioner to considerable added costs and expense.

7. This proceeding is brought to review, reverse and set aside upon grounds hereinafter specified, the findings, conclusion and order of the National Labor Relations Board made on December 12th, 1935. Your petitioner has not complied, and will not comply, with the provisions of said order pending a determination of this petition for review.

8. Your petitioner, Fruehauf Trailer Company, believing itself aggrieved by said order of the National Labor Relations Board of December 12th, 1935, and the steps ordered to be taken thereunder, and believing that said National Labor Relations Board has no jurisdiction to enter said order, or to make the demands made thereunder, and considering all of the same prejudicial to it, said petitioner, Fruehauf Trailer Company, hereby petitions for review of said order of December 12th, 1935, by the United States Circuit Court of Appeals for the Sixth Circuit and assigns the following for its reasons:

(a) The Act of Congress, Public No. 198 of the Seventy-Fourth Congress (S. No. 1958), approved July 5th, 1935, pursuant to which the National Labor Relations Board was created, is unconstitutional and void in its application to the Petitioner, Fruehauf Trailer Company, in that said Act purports to authorize said Board to assume jurisdiction, and said Board by virtue of said complaint and order of December 12, 1935 is attempting to assume jurisdiction, over matters not subject to the laws of the United States of America, and said Act contravenes Article I, Section 1, of, and the First, Fifth, Seventh and Tenth Amendments to the Constitution of the United States of America.

(b) All of the Fruehauf Trailer Company's manufacturing plants are located in, and all of its manufacturing operations are conducted in, the City of Detroit, State of Michigan. The employees covered by the complaint and order of December 12, 1935 of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer

Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to the manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board.

(c) The National Labor Relations Board has no jurisdiction over the subject-matter of the proceedings, nor any jurisdiction to make said findings, conclusion and order, herein described and referred to, in that such subject-matter does not concern interstate commerce; the Congress of the United States is without power under the Constitution of the United States to create or provide for a Board or tribunal with jurisdiction over matters of purely intrastate commerce; that Congress under the guise and pretext of regulating interstate commerce has by its enactments attempted to interfere with purely intrastate matters and the order of National Labor Relations Board is wholly void.

(d) The Act of Congress, Public No. 198 of the Seventy-Fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3 and 5 of Section 8 of said Act, severally, and the order of National Labor Relations Board dated December 12th, 1935, based thereupon, violate and contravene the Fifth Amendment to the Constitution of the United States in that they deprive Fruehauf Trailer Company of its property without due process of law, and deprive Fruehauf Trailer Company of the right and freedom to enter into contracts of employment with employees in the operation of its business guaranteed to it by the Constitution of the United States.

(e) The Act of Congress, Public No. 198, of the Seventy-Fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and particularly section 10 of said Act, and the hearings in the above described proceeding before the National Labor Relations Board upon which its order of December 12th, 1935, was based, violate and contravene the Fifth Amendment to the Constitution of the United States and deprive the Fruehauf Trailer Company of its property

without due process of law, in that the proceedings prescribed by said Act and the provisions in said Act for the presentation and admission of evidence at such proceeding is not in conformity with the rules of evidence prevailing in courts of law or equity, and denies to Fruehauf Trailer Company the safeguards of due process of law guaranteed to it by the Constitution of the United States.

(f) The Act of Congress, Public No. 198, of the Seventy-Fourth Congress (S. No. 1958), approved July 5th, 1935, and the proceedings of the National Labor Relations Board thereunder herein, violate and contravene the Seventh Amendment to the Constitution of the United States, in that said Act attempts to empower said National Labor Relations Board, and said National Labor Relations Board by its order of December 12th, 1935, is presuming to act in this proceeding, involving amounts in excess of the Constitutional limitation, so as to deprive Fruehauf Trailer Company of its right to have the facts covered by the complaint tried and determined by a jury in the manner guaranteed to it under the Seventh Amendment to the Constitution of the United States.

(g) The Act of Congress, Public No. 198, of the Seventy-Fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3 and 5 of Section 8 of said Act, and said order of December 12th, 1935, of National Labor Relations Board, severally, violate and contravene the First Amendment to the Constitution of the United States, in that they would deprive the Fruehauf Trailer Company, and deny to it, the right to freedom of speech guaranteed to it under the First Amendment to the Constitution of the United States.

(h) The finding of fact of said National Labor Relations Board as contained in its decision and order of December 12th, 1935, that Arthur Beck was employed in the shipping department of Fruehauf Trailer Company immediately prior to his discharge is erroneous and not supported by competent testimony, said testimony showing that during and at said times he was employed in the body department, a part of the manufacturing operations.

(i) The findings of fact in the decision and order of said National Labor Relations Board of December 12th, 1935, are not supported by any competent evidence whatsoever.

(j) The conclusions of said National Labor Relations Board in its decision and order of December 12th, 1935, are erroneous, contrary to law and are not supported by any competent evidence whatsoever.

(k) Said findings of fact, conclusion and order of said National Labor Relations Board of December 12th, 1935, are, and each of them is, contrary to law and wholly void.

9. Said findings of fact, conclusion and order of said National Labor Relations Board are erroneous and ought to be reviewed, reversed and set aside for the many apparent errors and imperfections hereinbefore shown.

Wherefore, your petitioner has brought this petition for a review of all said proceedings, findings, conclusion and order, by said National Labor Relations Board and prays:

(1) That a certified copy of this petition be forthwith served according to law, upon said National Labor Relations Board;

(2) That said National Labor Relations Board may be required, in conformity with law, to certify for filing in this Court a transcript of the entire record in the said proceedings wherein said order was entered, including all the testimony, evidence and exhibits taken, and the findings, conclusion and order of said Board; and

(3) That said proceedings, findings, conclusion and order be reviewed, and that the order be reversed, set aside and held for naught, and that no further proceedings be taken thereon; and

(4) That pending a hearing and final determination of this petition, this Court issue a restraining order and order staying proceedings enjoining and staying any and all proceedings which the National Labor Relations Board might take to enforce its said order of December 12th, 1935, except as may be pursued in the above entitled cause in the Sixth Circuit Court of Appeals; and

(5) That this Honorable Court exercise its jurisdiction over the parties and subject-matter of this petition, and that petitioner have such other and further relief in the premises as the rights and equities of the cause may require, and to your Honors may seem meet.

FRUEHAUF TRAILER COMPANY,
By EARL L. VOGLER,
Its Vice-President.

STATE OF MICHIGAN,
County of Wayne, ss:

EARL L. VOSLER, being first duly sworn, deposes and says that he is Vice-President of Fruehauf Trailer Company, Petitioner herein, and that he is duly authorized in the premises; that he has read the foregoing petition and that the statements and allegations therein contained are true of his knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

EARL L. VOSLER.

Subscribed and sworn to before me this 16th day of December, A. D. 1935.

[SEAL] VERONICA B. WALKER,
Notary Public, Wayne County, Michigan.

My commission expires: Dec. 8, 1936.

EXHIBIT A

(The text of the Board's Decision is omitted. It appears at pp. 45–59, *supra*.)

AMENDMENT SUPPLEMENTING PETITION OF FRUEHAUF TRAILER COMPANY TO REVIEW AND SET ASIDE ORDER OF NATIONAL LABOR RELATIONS BOARD

[No. 7291]

Filed December 28, 1935

To the Honorable Judges of the Circuit Court of Appeals for the Sixth Circuit.

Now comes Fruehauf Trailer Company, the petitioner above named amending (by way of supplement to) the petition of Fruehauf Trailer Company to Review and Set Aside

Order of National Labor Relations Board dated December 12th, 1935, under Public No. 198, Seventy-Fourth Congress, approved July 5th, 1935, so as to particularize, but not by way of limitation of, paragraph 8, subsections (i) and (j), as follows:

Paragraph 8 (i) of said petition is hereby amended, supplemented and particularized as follows:

The findings of fact as contained in paragraph 5 of the National Labor Relations Board's decision and order of December 12th, 1935, are not supported by any competent or substantial evidence whatsoever, and that while approximately eighty per cent (80%) of the sales of the Fruehauf Trailer Company have their destination outside of the State of Michigan that percentage is not a constant percentage and varies from day to day and on some days no products manufactured are shipped without the state.

The findings of fact as contained in paragraphs 8 and 9 of the decision and order of the National Labor Relations Board dated December 12th, 1935, in respect to practices of the Fruehauf Trailer Company are correct only if qualified to show that those practices cover only a very small percentage of the sales of the Fruehauf Trailer Company and do not cover the great majority of transactions, and in so far as any other impression is left by the phrasing of said findings of fact such impression or findings are not supported by competent or substantial evidence.

In so far as the phrasing of the findings of fact as contained in paragraph 10 of the decision and order of the National Labor Relations Board dated December 12th, 1935, leaves the inference that most of the materials used in the manufacture of the trailer are purchased in a completely finished form upon which no work is done, and that but little of the materials require complete or partial finishing and manufacturing operations, such findings of fact are not supported by competent or substantial evidence, the testimony clearly showing that the major portion of the materials purchased and used in the manufacture of the trailers made by the Fruehauf Trailer Company being in a completely unfinished or semi-rough form requiring extensive manufacturing operations, changing their form, nature and character before these materials so changed may be used in the manufacture of the trailer.

In so far as the findings of fact contained in paragraph 12 of the decision and order of National Labor Relations Board

dated December 12th, 1935, "many trailers are shipped to other states in a knocked down or disassembled condition" means a large proportion or percentage of the trailers shipped out of the state, that finding is not supported by competent or substantial evidence in that the testimony shows that only a very small and minor proportion of the trailers are shipped in this manner.

The findings of fact contained in paragraph 14 of the decision and order of National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence. The installation of the fifth wheel is one made upon the truck tractor and not to the trailer and is a simple installation which may be made, and is generally made, by the truck owner or the purchaser himself. The findings that before "most of respondent's trailers can be used this fifth wheel must be attached to the customer's truck or tractor" are not supported by the evidence, and the evidence shows that the Fruehauf trailer may be coupled to any other type of fifth wheel or truck coupler manufactured by other companies, and that this fifth wheel sold by the Fruehauf Company may be used in coupling other trailers made by other companies to the truck tractor.

The findings of fact as contained in paragraph 15 of the decision and order of the National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence, in that the witness Vosler did not make the statement reputed to have been made by him in said findings, but to the contrary the testimony shows that the witness carefully explained that the raw materials came to a complete rest and stop at the plant where they remained for upwards of one to four months, depending upon the nature of the material, and that when the material arrived at the plant its final point of destination was then unknown; that before the major portion of these materials became part of the trailers they required extensive manufacturing operations, which in most instances completely changed the nature, character and form of the materials from the state in which they arrived at the plant; that after the manufacturing operations a large number of assembling operations at the plant were required before the bodies were manufactured at the plant; that the manufacturing operations succeeded the shipment of the raw material to the plant, and preceded the shipment out of the finished trailer product; that the manufacturing operation was separate, distinct

and apart from the shipment of raw materials to the plant at Detroit and the manufacturing operation likewise was separate and distinct from the shipment of the manufactured product.

In so far as findings 16 and 17 are based upon the erroneous finding of fact contained in paragraph 15 that the process is a continuous flow of materials from the source through the Detroit plant and out in the finished product, they are not supported by competent or substantial evidence.

The manner of statement of findings of fact contained in paragraph 20 of the decision and order of the National Labor Relations Board dated December 12th, 1935, is misleading and as such is not supported by competent or substantial evidence. The testimony shows that like all manufacturing and many other types of business, if the demand for its products were lessened the factory operation would eventually be lessened and fewer raw materials would be purchased to be used in the manufacturing operations, but the manufacturing operations are separate and distinct in factual and legal character from the shipment to the factory of raw materials preceding the manufacturing operations and from the shipment out of the finished products succeeding the involved manufacturing operations.

The findings of fact contained in paragraph 21 of the decision and order of National Labor Relations Board dated December 12th, 1935, are not supported by competent or substantial evidence, but to the contrary the testimony shows that the maximum number of members ever claimed by the Union was approximately one hundred forty out of a total number of manufacturing or production employees of seven hundred.

The findings of fact contained in paragraph 40 of the decision and order of National Labor Relations Board dated December 12, 1935, are not supported by competent or substantial evidence, but to the contrary the testimony shows that the executive of Fruehauf Trailer Company testifying as a witness stated that there had never been any industrial strife at its plant which had stopped or materially affected its operations, but in answer to a hypothetical question by the members of the Board as to what might happen in the event a strike at the plant caused the closing of the plant the witness testified that naturally if the factory was not operating there would be no finished trailers, nor any requirements for raw materials during that period, but fur-

ther stated that the demand for trailers would be furnished by other trailer manufacturers and the raw materials for the manufacture of these trailers would be directed to the other companies manufacturing these trailers making these sales so that there would be no cessation of shipment of raw materials and finished trailers but rather a diversion from the Fruehauf Trailer Company to the other companies supplying the demand.

Paragraph 8 (j) of said petition is hereby amended, supplemented and particularized as follows:

The concluding finding of fact and conclusion of law as contained in paragraph 33 of the decision and order of National Labor Relations Board dated December 12, 1935, is not supported by competent or substantial evidence and is contrary to law as an erroneous statement thereof, in that the acts of the Fruehauf Trailer Company complained of by the National Labor Relations Board did not occur in commerce between the states, and that the employees covered by the complaint and order of the National Labor Relations Board were not engaged in interstate commerce.

The concluding finding of fact and conclusion of law as contained in paragraph 44 of the decision and order of National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence and is contrary to law and erroneously stated in that any cessation or obstruction of operations at the Fruehauf factory at Detroit would not have a direct material or substantial effect in burdening and/or obstructing commerce and the free flow of commerce between the State of Michigan and foreign countries.

The concluding finding of fact and conclusion of law as contained in paragraph 45 of the decision and order of National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence and is contrary to law and erroneously stated in that the acts of the Fruehauf Trailer Company complained of would not have the effect of burdening and/or obstructing commerce and/or the free flow of commerce between the State of Michigan and other states and foreign countries.

The concluding finding of fact and conclusion of law as contained in paragraph 46 of the decision and order of National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence and is contrary to law and erroneously stated in that the acts of

the Fruehauf Trailer Company complained of would not tend to lead to a labor dispute which would burden and/or obstruct commerce and/or the free flow of commerce between the State of Michigan, foreign countries and/or other states.

The concluding finding of fact and conclusion of law as contained in paragraph 47 of the decision and order of National Labor Relations Board dated December 12th, 1935, is not supported by competent or substantial evidence and is contrary to law and erroneously stated in that the alleged interference of Fruehauf Trailer Company complained of would not result and/or tend to result in a labor dispute and/or other forms of industrial unrest which would burden and/or obstruct commerce and/or the free flow of commerce.

The conclusions of law as contained in paragraph 48 (a) and (b) of the decision and order of the National Labor Relations Board dated December 12th, 1935, are erroneous as a matter of law in that the acts complained of in each of said subparagraphs did not and do not affect commerce within the meaning of Section 8, subdivision (1), Section 8, subdivision (3) and Section 2, subdivisions (6) and (7) of the National Labor Relations Act, Public No. 198, Seventy-Fourth Congress, approved July 5th, 1935, and if they are so construed then said National Labor Relations Act is beyond the power of Congress of the United States to enact and violative of the Tenth Amendment to the Constitution of the United States.

The National Labor Relations Board erred in denying the motion to dismiss of the Fruehauf Trailer Company.

FRUEHAUF TRAILER COMPANY,
By VICTOR W. KLEIN,
Its Attorney,
2288 National Bank Bldg., Detroit, Michigan.

Dated: December 20th, 1935.

STATE OF MICHIGAN,
County of Wayne, ss:

On this 20th day of December, A. D. 1935, before me, a Notary Public in and for said County, personally appeared VICTOR W. KLEIN, who being by me duly sworn, says that he has had principal charge of the above entitled cause for Butzel, Eaman, Long, Gust & Bills; that he has read the foregoing Amendment and has knowledge of the facts therein stated, and that the facts set forth in said Amend-

ment are true and correct, except as to matters therein stated on information and belief and as to those matters he believes it to be true.

VERONICA B. WALKER,
Notary Public, Wayne County, Michigan.

My commission expires: Dec. 8, 1936.

RETURN OF NATIONAL LABOR RELATIONS BOARD TO PETITION AND AMENDMENT SUPPLEMENTING PETITION TO REVIEW AND SET ASIDE ORDER

[No. 7291]

Filed February 2, 1936

Comes now the National Labor Relations Board, respondent herein, and for its return to the petition to review and set aside the order of respondent dated December 12, 1935, which petition was filed by the Freuhauf Trailer Company, petitioner herein, on December 17, 1935, and to the amendment supplementing said petition to review and set aside, filed by the petitioner on December 23, 1935, states as follows:

Respondent on December 17, 1935 forwarded to the Clerk of this Court its petition for enforcement of its order dated December 12, 1935, together with the original record of the proceedings before it, duly certified. Respondent prays that the record as certified to the Clerk of this Court for purposes of respondent's petition to enforce be likewise considered as filed in return to petitioner's petition to review and set aside.

Respondent further states that petitioner in its petition and amendment herein has failed to confine itself to allega-

tions that specific findings of fact by respondent are not supported by evidence or that respondent improperly failed and refused to find further specific facts; that the allegations in said petition and amendment are argumentative; that said allegations raise new issues; that said allegations include allegations of fact not contained in the record herein; that said petition and amendment are indefinite and include surplusage and fail to bring before this Honorable Court the single issue of whether or not respondent's order should be enforced, modified, or set aside, as provided by Section 10 (e) and (f) of the National Labor Relations Act.

Respondent therefore, specifically reserving its objections to the content and allegations in petitioner's petition and amendment herein; its rights to urge that the said allegations be stricken out and held for naught, insofar as they contain matter other than naming specific findings claimed to be supported by no evidence or improperly not found by respondent; and without admitting the truth of said allegations save as hereinafter specifically mentioned, but on the contrary denying the truth of said allegations, states as its return thereto as follows:

1. Respondent admits each and every allegation set forth in Paragraph 1 of the petition except that it denies that all of petitioner's manufacturing plants and operations are within the State of Michigan, within the Sixth Judicial Circuit of the United States and within the jurisdiction of this Court.

2. Respondent admits each and every allegation set forth in Paragraph 2 of the petition except that it states that the members of the National Labor Relations Board were appointed by the President of the United States by and with the advice and consent of the Senate.

3. Respondent admits each and every allegation set forth in Paragraph 3 of the petition.

4. Respondent denies each and every allegation set forth in Paragraph 4 of the petition except that it admits that for many years past and during the time of the acts described in respondent's complaints up to and including the present date was and is now engaged in the manufacture of trailers, semi-trailers, carryalls, parts and accessories.

5. Respondent admits each and every allegation contained in Paragraph 5 of the petition except that it denies that all of the employees covered by the complaints of respondent were engaged in the production and manufacturing depart-

ments of petitioner and states that respondent's complaints are based not only upon the charge of the union but upon a preliminary investigation by its agents and states that upon renewal of the motions to dismiss at the hearing before the full Board at Detroit, Michigan, the Board dismissed those motions only after the submission of evidence and oral argument. Respondent states that Paragraph 5 does not fully describe the charges of the union, or the complaints issued by respondent and that said charges and complaints are part of the record herein.

6. Respondent denies each and every allegation set forth in Paragraph 6 of the petition.

7. Respondent denies each and every allegation set forth in Paragraphs 8 (a), (b), (c), (d), (e), (f), and (g). Insofar as Paragraph 8 (h) is concerned, respondent avers that its finding referred to therein is supported by evidence and that the objections raised by petitioner do not properly state and have no bearing on said finding, and are purely explanatory and argumentative. Respondent denies each and every allegation set forth in Paragraphs 8 (i), (j), and (k).

8. Insofar as Paragraph 9 of the petition is concerned respondent avers that its finding of fact, conclusion, and order herein are substantiated by the evidence and are not erroneous and therefore denies that they should be reversed and set aside and also denies that they contain errors and imperfections.

9. Insofar as petitioner's amendment supplementing its petition is concerned, respondent states that the findings of respondent referred to by petitioner therein are supported by evidence in accordance with Sub-section (e) of Section 10 of the National Labor Relations Act. Petitioner in its amendment to its petition has failed to confine itself to objections to respondent's findings or to statements that respondent improperly failed and refused to find specific facts. The petition is devoted to argument, raises new issues, and includes allegations of fact not contained in the record.

With respect to the findings of respondent which are argumentatively questioned by petitioner in its amendment to its petition in the manner described above respondent states:

The Board's finding 5 is supported by evidence. Petitioner's objection that the percentage referred to in Find-

ing 5 is not a consistent percentage and varies from day to day and that on some days no products manufactured are shipped without the state is not based upon evidence, has no bearing upon the finding, and is solely explanatory.

The Board's findings 8 and 9 are supported by evidence. Petitioner has alleged that findings 8 and 9 are correct only if qualified to show that such practices cover only a very small percentage of petitioner's sales and do not cover the great majority of transactions and insofar as any other impression is conveyed the findings are in error. Petitioner's objections have no bearing upon the Board's findings, said findings having stated the practices referred to as "a practice", and are purely argumentative.

The Board's finding 10 is supported by evidence.

Petitioner's objections are argumentative and by way of explanation. The Board's finding leaves no inference in accordance with petitioner's objection. It should be noted that the Board has used the terms "on some of the materials purchased" and "a substantial part" which terms are proper in view of the evidence.

The Board's finding 12 is supported by evidence.

The use of the word "many" means many and not "a large proportion." Again petitioner's objection is argumentative and explanatory.

The Board's finding 14 is supported by evidence.

The objections raised by petitioner are not sustained by the evidence and are argumentative and explanatory.

The Board's finding 15 is sustained by evidence.

Petitioner's objections to this finding are based upon a statement read into the record by the Witness Vosler in lieu of testimony and admittedly prepared by his attorneys. Vosler continued to testify on direct and cross-examination after he had finished reading the prepared statement into the record. The finding is entirely sustained by evidence and the objections raised are purely argumentative.

The Board's findings 16 and 17 are sustained by evidence.

Whether or not petitioner has objected to these findings is doubtful. Findings 16 and 17 state the facts as they appear in the record without reference to the statement in the objection as follows: "a continuous flow of materials."

The Board's finding 20 is supported by evidence. Petitioner's objections are purely argumentative.

The Board's finding 21 is supported by evidence.

The Board's finding 40 is supported by evidence. Petitioner's objections are made by way of explanation and do not show that there is no evidence to support the Board's findings.

The Board's findings and conclusions of law Nos. 43, 44, 45, 46 and 47 are sustained by evidence. Respondent denies each and every allegation set forth in the amendment to the petition herein bearing upon these findings and conclusions of law.

The Board's finding and conclusion 48 (a) and (b) are proper and respondent denies each and every allegation set forth in the amendment to the petition with regard to finding and conclusion 48 (a) and (b).

Wherefore, respondent respectfully requests that the petition to review and set aside the order of the National Labor Relations Board dated December 12, 1935, and the amendment supplementing said petition be dismissed with costs.

NATIONAL LABOR RELATIONS BOARD,
By J. WARREN MADDEN, *Chairman.*

CHARLES FAHY,
General Counsel,
ROBERT B. WATTS,
Associate General Counsel,
Attorneys for the National Labor Relations Board.

DISTRICT OF COLUMBIA, *ss:*

J. WARREN MADDEN, being duly sworn, deposes and says that he is the Chairman of the National Labor Relations Board and makes this affidavit on behalf of said Board; that he has read the foregoing return and has knowledge of the facts stated therein; and that the statements and allegations made in the foregoing return are true to the best of his knowledge and belief.

(S.) J. WARREN MADDEN,
Chairman, National Labor Relations Board.

Subscribed and sworn to before me this 1st day of February, 1936.

[SEAL]

JOHN E. LAWYER,
Notary Public, District of Columbia.

My commission expires September 8, 1939.

PETITION OF NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF ORDER

[No. 7297]

Filed December 19, 1935

To the honorable the Judges of the United States Circuit Court of Appeals for the Sixth Circuit:

The National Labor Relations Board (hereinafter referred to as the Board), pursuant to the authority conferred upon it by the provisions of an Act of Congress approved July 5, 1935 (Public, No. 198, 74th Congress, 49 Stat. 10, 29 U. S. C. A., Sec. 160 (e)), known as the National Labor Relations Act, respectfully petitions this Honorable Court for the enforcement of a certain order issued by it in two proceedings instituted by said Board against respondent Fruehauf Trailer Company. Each of said proceedings is entitled "In the Matter of Fruehauf Trailer Company and United Automobile Workers Federal Labor Union #19375" and, until their consolidation, were known, respectively, as Regional No. VII–C–1 and Regional No. VII–C–3. Said two proceedings were consolidated prior to hearing and were thereafter and now are known upon the records of the Board as N. L. R. B. Case No. C–2.

In support of such petition, petitioner respectfully shows:

(1) Respondent Fruehauf Trailer Company is, and at all times herein mentioned was, a corporation organized under and existing by virtue of the laws of the State of Michigan, having its principal office and place of business in the City of Detroit, County of Wayne, State of Michigan.

(2) By reason of the matters set forth in paragraph (1) hereof, this Court has jurisdiction of this petition under Section 10 (e) of the said National Labor Relations Act.

(3) On the 23rd day of October, 1935, charges having been theretofore duly filed with the Board by United Automobile Workers Federal Labor Union #19375 and certain employees of respondent, jointly, the Board issued its complaint in said constituent proceeding No. VII–C–1 charging that the respondent had engaged and was then engaging in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act. On the 23rd day of October, 1935, said complaint, together with a notice of hearing thereon, was duly served upon respondent.

(4) On the 29th day of October, 1935, a charge having been theretofore duly filed with the Board by United Automobile Workers Federal Labor Union #19375 and an employee of respondent, jointly, the Board issued its complaint in said constituent proceeding No. VII–C–3 charging that the respondent had engaged and was then engaging in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act. On the 29th day of October, 1935, said complaint, together with a notice of hearing thereon, was duly served upon respondent.

(5) On the 29th day of October, 1935, the Board ordered that said constituent proceedings, No. VII–C–1 and VII–C–3, be consolidated and that, as so consolidated, they be heard together.

(6) Thereafter respondent, appearing specially by counsel for such purpose, separately moved to dismiss each of the said complaints. Upon the denial of each said motion, respondent duly filed its respective answers to the complaints in said proceedings.

(7) Thereafter, on the 6th, 7th, and 8th days of November 1935, the Board, pursuant to its notices thereof, held a hearing on the charges stated in said complaints. At said hearing, testimony and other evidence with respect to the charges stated in said complaints were adduced by the parties to said proceedings, including respondent, who was present and represented at said hearing by counsel and by certain of its officers, agents and employees.

(8) Thereafter, on the 12th day of December, 1935, the Board, having duly considered the matters and being sufficiently advised in the premises, and being of the opinion that upon all the testimony and evidence in said proceedings the respondent had been and then was engaged in certain unfair labor practices affecting commerce within the meaning of said National Labor Relations Act, duly stated its findings of fact and issued and entered the following order in said proceedings, as consolidated, directed to respondent:

(The text of the order is omitted. It appears at pp. 58–59, *supra*.)

(9) The said order was duly served upon respondent and is, and at all times since its said issuance and service has been, in full force and effect.

Wherefore, the Board petitions this Honorable Court for the enforcement of its said order of December 12, 1935, and pursuant to Section 10 (e) of said National Labor Relations Act certifies and files with this petition a transcript of the entire record in the said proceedings before the Board, including the pleadings, the testimony and evidence, the findings of fact and said order of the Board.

The Board prays this Honorable Court that it cause notice of the filing of this petition and transcript to be served upon respondent, and that this court take jurisdiction of the said proceedings and of the questions determined therein, and make and enter upon the pleadings, testimony and evidence and the proceedings set forth in such transcript, and upon the order made thereupon, a decree enforcing in whole said order of the Board and commanding respondent, its officers, agents, and representatives, to comply therewith.

(S.) J. WARREN MADDEN,
Chairman,

[SEAL] (S.) JOHN M. CARMODY,
Member,

(S.) EDWIN S. SMITH,
Member,
National Labor Relations Board.

(S.) CHARLES FAHY,
General Counsel, National Labor Relations Board,
Washington, D. C.

DISTRICT OF COLUMBIA, ss:

J. Warren Madden, being duly sworn, deposes and says that he is the Chairman of the National Labor Relations Board and makes this affidavit on behalf of said Board; that he has read the foregoing petition and has knowledge of the facts stated therein; and that the statements made in the foregoing petition are true to the best of his knowledge and belief.

(S.) J. WARREN MADDEN,
Chairman, National Labor Relations Board.

Subscribed and sworn to before me, this 17 day of December 1935.

JOHN E. LAWYER,
Notary Public.

ANSWER AND RETURN OF FRUEHAUF TRAILER COMPANY TO PETITION OF NATIONAL LABOR RELATIONS BOARD FOR ENFORCEMENT OF ORDER

[No. 7297]

Filed March 17, 1935

Now comes Fruehauf Trailer Company, Respondent herein, and for its answer and return to the petition of the National Labor Relations Board for the enforcement of an order entered by that Board, and directed to Respondent, Fruehauf Trailer Company, under date of December 12th, 1935, and at all times denying the authority of the National Labor Relations Board, which Board was created by Act No. 198, Seventy-fourth Congress, particularly in respect to the proceedings against the Fruehauf Trailer Company, consolidated under the National Labor Relations Board Case No. C-2, and the order issued by said Board, and specifically reserving jurisdictional objections to be pointed out herein, Respondent, Fruehauf Trailer Company, as its return and answer to the petition of the National Labor Relations Board says:

1. Answering paragraph 1 of said petition, Respondent, Fruehauf Trailer Company, admits the allegations therein contained.

2. Answering paragraph 2 of said petition, Respondent, Fruehauf Trailer Company, respectfully shows unto the court that prior to the time of filing of the petition by National Labor Relations Board, on December 17th, 1935, Fruehauf Trailer Company, as petitioner, filed a petition in this United States Circuit Court of Appeals for the Sixth Circuit, No. 7291, to review and set aside the order of the National Labor Relations Board dated December 12th, 1935, to which National Labor Relations Board has filed a return. Fruehauf Trailer Company further shows that the court had exclusive jurisdiction of the subject-matter for the review of said order of December 12th, 1935, in said proceedings (prior to the filing of the petition to enforce of National Labor Relations Board hereunder), and that the appropriate procedure for the National Labor Relations Board to seek the relief sought in this proceeding is to file its cross petition in the proceeding No. 7291. However, a stipulation consolidating the two proceedings for argument and providing for the use of one record has been filed in each of said causes.

3. Answering paragraph 3 of said petition, Respondent, Fruehauf Trailer Company, admits the allegations therein contained.

4. Answering paragraph 4 of said petition, Respondent, Fruehauf Trailer Company, admits the allegations therein contained.

5. Answering paragraph 5 of said petition, Respondent, Fruehauf Trailer Company, admits the allegations therein contained.

6. Answering paragraph 6 of said petition, Respondent, Fruehauf Trailer Company, admits the allegations therein contained.

7. Answering paragraph 7 of said petition, Respondent, Fruehauf Trailer Company, admits that the Board held a hearing on November 6th, 7th, and 8th, 1935, and respectfully shows that the testimony adduced by Respondent, Fruehauf Trailer Company, was in support of its contention that the manufacturing operations, in which the seven employees involved in said proceedings were exclusively employed, were conducted exclusively in the City of Detroit and within the State of Michigan were purely local and intrastate in character, and that these employees and the Fruehauf Trailer Company in this manufacturing operation were not engaged in interstate commerce, or in operations which directly affected interstate commerce. The testimony adduced by Fruehauf Trailer Company further supported the contention of the Respondent, Fruehauf Trailer Company, that the National Labor Relations Act was not applicable to the Fruehauf Trailer Company, the Respondent, or in its relationship with the seven employees involved in said proceedings, and was further directed to other constitutional objections raised by said Respondent. Further answering paragraph 7 of said petition, Respondent denies that it adduced any direct testimony in respect to the charges of alleged unfair labor practice as contained in said complaints of National Labor Relations Board. Respondent relied, except for purposes of cross-examination of witnesses of National Labor Relations Board, upon the aforesaid objections to the authority of the National Labor Relations Board, the nonapplication of said National Labor Relations Act to said proceedings, and other constitutional objections.

8. Answering paragraph 8 of said petition, Respondent, Fruehauf Trailer Company, denies that it was engaged in unfair labor practices which affected interstate commerce

within the meaning of the National Labor Relations Act, or within the power of Congress of the United States to regulate. Further answering said paragraph, Respondent, Fruehauf Trailer Company, admits that said National Labor Relations Board entered the order under date of December 12th, 1935, although said order was not served upon Respondent until December 16th, 1935, and upon receipt of said order Respondent, Fruehauf Trailer Company, as petitioner, prepared a petition to review and set aside said order and filed the same on December 17th, 1935, in this United States Circuit Court of Appeals for the Sixth Circuit, No. 7291, prior to the time of the filing of the petition to enforce, filed by the National Labor Relations Board herein.

9. Answering paragraph 9 of said petition, Respondent, Fruehauf Trailer Company, denies that said order has at any time since its issuance been in force and effect, but to the contrary said order is void and without legal force and effect.

Further answering said petition, Fruehauf Trailer Company believes itself aggrieved by said order of National Labor Relations Board of December 12th, 1935 and respectfully submits that the court should review, set aside and reverse the order of the National Labor Relations Board of December 12th, 1935 in accordance with the petition of Fruehauf Trailer Company filed in this court, No. 7291. Fruehauf Trailer Company further respectfully submits that the petition of National Labor Relations Board in this proceeding, No. 7297, to enforce said order of December 12th, 1935 should be dismissed for the following reasons:

(a) The Act of Congress, Public No. 198 of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, pursuant to which the National Labor Relations Board was created, is unconstitutional and void in its application to the Fruehauf Trailer Company, in that said Act purports to authorize said Board to assume jurisdiction, and said Board by virtue of said complaint and order of December 12, 1935 is attempting to assume jurisdiction over matters not subject to the laws of the United States of America, and said Act contravenes Article I, Section 1, of, and the First, Fifth, Seventh, and Tenth Amendments to the Constitution of the United States of America.

(b) All of the Fruehauf Trailer Company's manufacturing plants are located in, and all of its manufacturing operations are conducted in, the City of Detroit, State of Michigan. The employees covered by the complaint and order of De-

cember 12th, 1935, of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to the manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board.

(c) The National Labor Relations Board has no jurisdiction over the subject-matter of the proceedings, nor any jurisdiction to make said findings, conclusion, and order, herein described and referred to, in that such subject-matter does not concern interstate commerce; the Congress of the United States is without power under the Constitution of the United States to create or provide for a Board or tribunal with jurisdiction over matters of purely intrastate commerce; that Congress under the guise and pretext of regulating interstate commerce has by its enactments attempted to interfere with purely intrastate matters and the order of National Labor Relations Board is wholly void.

(d) The Act of Congress, Public No. 198 of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3, and 5 of Section 8 of said Act, severally, and the order of National Labor Relations Board dated December 12th, 1935, based thereupon, violate and contravene the Fifth Amendment to the Constitution of the United States in that they deprive Fruehauf Trailer Company of its property without due process of law, and deprive Fruehauf Trailer Company of the right and freedom to enter into contracts of employment with employees in the operation of its business guaranteed to it by the Constitution of the United States.

(e) The Act of Congress, Public No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and particularly section 10 of said Act, and the hearings in the above described proceeding before the National Labor Relations Board upon which its order of December 12th, 1935, was based, violate and contravene the

Fifth Amendment to the Constitution of the United States and deprive the Fruehauf Trailer Company of its property without due process of law, in that the proceedings prescribed by said Act and the provisions in said Act for the presentation and admission of evidence at such proceeding is not in conformity with the rules of evidence prevailing in courts of law or equity, and denies to Fruehauf Trailer Company the safeguards of due process of law guaranteed to it by the Constitution of the United States.

(f) The Act of Congress, Public No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, and the proceedings of the National Labor Relations Board thereunder, violate and contravene the Seventh Amendment to the Constitution of the United States, in that said Act attempts to empower said National Labor Relations Board, and said National Labor Relations Board by its order of December 12th, 1935, is presuming to act in this proceeding, involving amounts in excess of the Constitutional limitation, so as to deprive Fruehauf Trailer Company of its right to have the facts covered by the complaint tried and determined by a jury in the manner guaranteed to it under the Seventh Amendment to the Constitution of the United States.

(g) The Act of Congress, Public No. 198, of the Seventy-fourth Congress (S. No. 1958), approved July 5th, 1935, as a whole, and subsections 1, 3, and 5 of Section 8 of said Act, and said order of December 12th, 1935, of National Labor Relations Board, severally, violate and contravene the First Amendment to the Constitution of the United States, in that they would deprive the Fruehauf Trailer Company, and deny to it, the right to freedom of speech guaranteed to it under the First Amendment to the Constitution of the United States.

(h) The finding of fact of said National Labor Relations Board as contained in its decision and order of December 12th, 1935, that Arthur Beck was employed in the shipping department of Fruehauf Trailer Company immediately prior to his discharge is erroneous and not supported by competent testimony, said testimony showing that during and at said times he was employed in the body department, a part of the manufacturing operations.

(i) The findings of fact in the decision and order of said National Labor Relations Board of December 12th, 1935, are not supported by any competent evidence whatsoever.

(j) The conclusions of said National Labor Relations Board in its decision and order of December 12th, 1935, are erroneous, contrary to law, and are not supported by any competent evidence whatsoever.

(k) Said findings of fact, conclusion, and order of said National Labor Relations Board of December 12th, 1935, are, and each of them is, contrary to law and wholly void; and for the other reasons more particularly set forth in the petition of Fruehauf Trailer Company to review and set aside said order and the amendment supplementing said petition filed in this court in case No. 7291, which petition and amendment are incorporated herein by reference, with the same force and effect as though set out at full length herein, and which will be before the court at the time of the consolidated hearing in the two matters.

FRUEHAUF TRAILER COMPANY,
By (Sgd.) EARL T. VOSLER,
Its Vice-President.

BUTZEL, EAMAN, LONG, GUST & BILLS,
Attorneys for Fruehauf Trailer Company,
2288 National Bank Bldg., Detroit, Michigan.
THOMAS G. LONG,
ROCKWELL T. GUST,
JOHN C. BILLS,
VICTOR W. KLEIN,
Of Counsel.

STATE OF MICHIGAN,
County of Wayne, ss:

EARL L. VOSLER, being first duly sworn, deposes and says that he is Vice-President of FRUEHAUF TRAILER COMPANY, Respondent herein, and that he is duly authorized in the premises; that he has read the foregoing Answer and Return to the Petition of National Labor Relations Board, and that the statements and allegations therein contained are true of his own knowledge, except as to the matters therein stated to be on information and belief, and as to those matters he believes it to be true.

(Sgd) EARL L. VOSLER.

Subscribed and sworn to before me this 16th day of March, A. D. 1936.

(Sgd) DOROTHY V. EPSTEIN,
Notary Public, Wayne County, Michigan.

My commission expires: Oct. 9, 1939.

U. S. GOVERNMENT PRINTING OFFICE: 1936

PROCEEDINGS IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Causes argued and submitted

June 2, 1936

Before MOORMAN, HICKS, and SIMONS, JJ.

These causes are argued by Victor W. Klein for Fruehauf Trailer Company and by Stanley Reed and Charles Fahy for National Labor Relations Board, and are submitted to the Court.

Decree No. 7291

Filed June 30, 1936

Petition to Review an Order of the National Labor Relations Board.

This cause came on to be heard on the record of the proceedings before the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this court that the order of the Board in this cause be and the same is hereby set aside.

Decree No. 7297

Filed June 30, 1936

Petition to Enforce an Order of the National Labor Relations Board.

This cause came on to be heard on the record of the proceedings before the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is now here ordered, adjudged, and decreed by this Court that the petition of the Board in this cause be and the same is hereby dismissed.

Opinion (Nos. 7291–7297)

Filed June 30, 1936

Filed June 30, 1936. John W. Menzies, clerk.

84340—36

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Nos. 7291, 7297

FRUEHAUF TRAILER COMPANY, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY, RESPONDENT

On Petitions for Review and Enforcement of an Order of the National Labor Relations Board

Decided June 30, 1936

Before MOORMAN, HICKS, and SIMONS, Circuit Judges

PER CURIAM: The National Labor Relations Board has filed a petition in this court to enforce an order issued by it in proceedings which it instituted against the Fruehauf Trailer Company. The order directs the Trailer Company to cease and desist from discharging or threatening to discharge any of its employees because of their activities in connection with the United Automobile Workers Federal Labor Union No. 19,375, to cease discouraging its employees from becoming members of that union, to offer to certain of its former employees immediate and full reinstatement in their former positions without prejudice to their seniority rights, to make such employees whole for any losses of pay that they have suffered by reason of their discharge by paying them what they would have earned as wages from the dates of their discharges, and to post notices throughout its Detroit plant, in conspicuous places, stating that it has ceased and desisted from discharging or threatening to discharge its employees for joining the United Automobile Workers Federal Labor Union No. 19,375. The Fruehauf Trailer Company has filed its petition seeking a review of the order and praying that the court set it aside. The record of the proceeding before the Labor Board has been filed and the two petitions have been heard together in this court.

The Fruehauf Trailer Company is a corporation organized and existing under the laws of the State of Michigan and is engaged in the manufacture, assembly, and sale of automobile trailers at its plant in Detroit, Michigan. The material and parts used in the manufacture and production of the trailers are shipped to the plant. After the trailers are manufactured, many of them are shipped to

other states for sale and use. The order in question undertakes to regulate and control the Trailer Company's relations and dealings with its employees engaged in the production and manufacture of trailers at the company's plant in Detroit and does not directly affect any of the activities of the Trailer Company in the purchasing and transporting to its plant of materials and parts for the manufacture and production of trailers or in the shipping or selling of such trailers after they are manufactured. It was issued under the authority of the Act of Congress of July 5, 1935, known as the National Labor Relations Act. The authority for the Act is claimed under the commerce clause of the Constitution. Since the order is directed to the control and regulation of the relations between the Trailer Company and its employees in respect to their activities in the manufacture and production of trailers and does not directly affect any phase of any interstate commerce in which the Trailer Company may be engaged, and since, under the ruling of Carter v. Carter Coal Company, — U. S. — (decided May 18, 1936), the Congress has no authority or power to regulate or control such relations between the Trailer Company and its employees, the National Labor Relations Board was without authority to issue the order [See National Labor Relations Board v. Jones & McLaughlin Steel Corporation (5 C. C. A.), decided June 15, 1936].

The petition of the Board is accordingly dismissed and the order is set aside.

United States Circuit Court of Appeals for the Sixth Circuit

I, J. W. Menzies, Clerk of the United States Circuit Court of Appeals for the Sixth Circuit, do hereby certify that the foregoing is a true and correct copy of the record and proceedings in the cases of Fruehauf Trailer Company, vs. National Labor Relations Board, No. 7291, and National Labor Relations Board vs. Fruehauf Trailer Company, No. 7297, as the same remains upon the files and records of said United States Circuit Court of Appeals for the Sixth Circuit, and of the whole thereof.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court at the City of Cincinnati, Ohio, this 23rd day of July A. D. 1936.

[SEAL] J. W. MENZIES,
Clerk of the United States Circuit Court of Appeals,
for the Sixth Circuit.

U. S. GOVERNMENT PRINTING OFFICE: 1936

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1936

Nos. ———

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY, RESPONDENT

Stipulation with respect to exhibits

It is hereby stipulated and agreed by and between the above-named parties through their respective attorneys that exhibits introduced in evidence in the proceeding before the National Labor Relations Board, numbered B–2, B–3, B–4, B–5, B–6, and B–12, were filed as physical exhibits with the United States Circuit Court of Appeals for the Sixth Circuit, and pursuant to stipulation, were not printed in the record. It was stipulated that said physical exhibits could be referred to by either party in briefs and arguments and were to be available for the inspection of the Court. Said physical exhibits, though not printed, were to remain part of the record before the United States Circuit Court of Appeals for the Sixth Circuit.

It is further stipulated and agreed that said exhibits, numbered B–2, B–3, B–4, B–5, B–6, and B–12, need not be printed in the record before the Supreme Court of the United States, but shall be filed with the Supreme Court of the United States as physical exhibits. Said exhibits can be referred to by either party in briefs and arguments and shall be available for inspection by the Supreme Court of the United States and shall remain part of the record before the Supreme Court of the United States.

STANLEY REED,
Solicitor General.
CHARLES FAHY,
ROBERT B. WATTS,
Attorneys for National Labor Relations Board.
THOMAS G. LONG,
VICTOR W. KLEIN,
Attorneys for Freuhauf Trailer Company.

Dated: September 24, 1936.

524 Supreme Court of the United States

No. 420, October Term, 1936

Order allowing certiorari

Filed November 9, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is assigned for argument immediately following No. 419.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

525 Supreme Court of the United States

No. 421, October Term, 1936

Order allowing certiorari

Filed November 9, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, and the case is assigned for argument immediately following No. 419 and 420.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

U. S. GOVERNMENT PRINTING OFFICE: 1937

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In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 420, 421

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY

PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of the National Labor Relations Board, prays that writs of certiorari issue to review the decrees of the United States Circuit Court of Appeals for the Sixth Circuit, entered in the above cause on June 30, 1936 (R. 520), denying a petition by the National Labor Relations Board for the enforcement of its cease and desist order against the Fruehauf Trailer Company, made pursuant to the National Labor Relations Act, and granting a petition by said company to set aside said order.

OPINIONS BELOW

The findings of fact and order of the National Labor Relations Board (R. 45–59), and the opinion of the Circuit Court of Appeals (R. 521–522) have not yet been reported.

JURISDICTION

The decrees of the Circuit Court of Appeals for the Sixth Circuit were entered on June 30, 1936 (R. 520). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, as applied to this company, the National Labor Relations Act is a valid exercise of the power of Congress to regulate commerce among the States and with foreign nations.

2. Whether the provisions of the National Labor Relations Act here involved violate the Fifth Amendment to the Constitution in that they deprive respondent of its liberty or property without due process of law.

STATUTE INVOLVED

The National Labor Relations Act is printed as an Appendix to the petition for certiorari in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, No. 419, filed herewith, to which the Court is respectfully referred.

STATEMENT

On October 4, 1935, and October 17, 1935, written charges against respondent, the Fruehauf Trailer Company, were filed with the Regional Director for the Seventh Region of the National Labor Relations Board, pursuant to Section 10 (b)

of the National Labor Relations Act (printed in Appendix of petition for certiorari in No. 419, p. 25) (R. 4–6, 7–9). The charges were filed by United Automobile Workers Federal Labor Union No. 19375 and by certain employees of respondent, and alleged that respondent had engaged in, and was continuing to engage in, certain unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3), and (4) and Section 2, subsections (6) and (7) of the Act (R. 4–9).

On October 23, 1935, and October 29, 1935, pursuant to Section 10 (b) of the Act, the Regional Director issued and served upon respondent two complaints (R. 9–20). These complaints alleged unfair labor practices affecting commerce within the meaning of subsections (1) and (3) of Section 8, and subsections (6) and (7) of Section 2, and fixed November 6, 1935, for a hearing before an examiner (R. 9–20). By order of October 29, 1935, the Board ordered the two proceedings to be consolidated and heard by the Board itself (R. 22–23).

On October 31, 1935, and November 5, 1935, respondent, appearing specially, filed motions to dismiss the respective complaints on the ground that the National Labor Relations Board had no jurisdiction over the company, and also on the ground that the Act as applied to the company contravened the Constitution (R. 23–29). The motion to dismiss the first complaint was overruled by the Board on November 4, 1935 (R. 28). On Novem-

ber 5, 1935, respondent filed answers, renewing its motions to dismiss (R. 29–39).

Hearings were held on November 6, 7, and 8, 1935. Following the introduction of evidence on the jurisdictional issues raised by the motion to dismiss, the Board reaffirmed its overruling of the motion to dismiss the first complaint and overruled the motion to dismiss the second complaint (R. 200).

On December 12, 1935, the Board handed down its decision setting forth its findings of fact (R. 45–58), and entered the order here in question (R. 58–59). These findings may be summarized as follows:

Respondent is a Michigan corporation engaged in the manufacture, sale, assembly, and distribution of commercial trailers and trailer parts and accessories (R. 46). Its plant and principal office are located in Detroit, Michigan, but it maintains branch sales offices in twelve different States, has distributors and dealers in the principal cities of the United States, and operates a wholly-owned subsidiary in Toronto, Canada. It is the largest concern of its kind in the United States (R. 46–7).

More than 50 per cent by value of the materials from which respondent's trailers are built come from States other than Michigan (R. 46). Much of this material coming from other States is in unfinished form, and further work is done on it in the Detroit plant before it is used in the trailers,

but a substantial part of it is received in finished form (R. 47–48). More than 80 per cent of respondent's sales are of products shipped outside Michigan to other States and foreign countries. In the first ten months of 1935 such sales amounted to 112 carloads of products in addition to 400 or 500 trailers and accessories which were hauled over the highways by trucks or tractors to points outside the State (R. 46). These sales are accomplished through its branch sales offices and dealers, and, in Canada, through respondent's Canadian subsidiary. Except where a sale is made from branch sales office stocks for cash, all sales are subject to the approval of the Detroit office, and all notes or mortgages are negotiated through the Freuhauf Trailer Sales Company, a wholly-owned subsidiary, and are made payable to the company (R. 47).

In connection with its interstate sales respondent furnishes service both in the determination of customers' needs and in making mechanical repairs and adjustments (R. 47). Many of its branch sales offices maintain a supply of parts which are shipped to them from the plant in Detroit. Mechanics employed by the company are permanently stationed at many branch offices, and traveling mechanics supervise their work (R. 48). A substantial part of this work consists of changes in construction, weight, and design. The mechanics also install couplings, called "fifth wheels", on the customers' trucks or tractors. Many of the

trailers shipped to other States or foreign countries are disassembled by the company's shipping department before shipment and then assembled again near the point of destination (R. 48).

It is respondent's avowed aim to maintain a steady flow of materials into and through its Detroit plant, and a steady flow of completed trailers out to its purchasers. It maintains for this purpose a planning division employing about twenty or thirty men, who lay out schedules for all operations (R. 48–49). So closely are the various operations synchronized that on occasion work or shipment is delayed until required parts arrive to complete the assembly (R. 49). The company's manufacturing and assembly operations at Detroit are thus essentially connected with and dependent upon its purchases, sales, and distributive operations without the State of Michigan (R. 49). These connections and interdependencies are accomplished through and make use of commerce among the States and with foreign countries, and the instrumentalities of such commerce (R. 49).

A considerable number of respondent's employees belonged to the United States Automobile Workers Federal Labor Union No. 19375, a labor organization. Seven employees, all active members or officers of this Union, were discharged by respondent in the period July 5 to October 10, 1935, in furtherance of its purpose to put a stop to all attempts on the part of its employees to form an

independent labor organization (R. 50–54). These employees were engaged in production, assembly, and disassembly operations (*Id.*). The labor organization of which they are members is of the inclusive, industrial type.

In conclusion, the Board found that any cessation or obstruction of operations at the Detroit plant necessarily has a direct, material, and substantial effect of burdening and obstructing the free flow of commerce between the State of Michigan and other States and Canada (R. 56–57). It also found that the discharges, and threats of discharges, by causing resentment, unrest, and confusion among respondent's employees and by tending to cause labor disputes, had the effect of obstructing the free flow of commerce (R. 57).

On the basis of these findings the Board decided, as a matter of law, that respondent was engaged in unfair labor practices affecting commerce within the terms of Section 8, subsections (1) and (3), and Section 2, subsections (6) and (7) of the Act (R. 57–58). It therefore issued an order requiring respondent to cease and desist from practices tending to interfere with or restrain the organization of its employees, and ordering respondent to offer their former positions with back pay to seven of the discharged men without prejudice to their seniority or other rights; and to post in the plant a notice stating that respondent was complying with the order (R. 58–59).

On December 17, 1935, respondent filed in the court below its petition to review, reverse, and set aside the order of the Board, and on December 23, 1935, it filed a supplementing amendment (R. 492–506). On February 2, 1936, the Board filed a return to the petition, praying that it be dismissed (R. 506–510). On December 19, 1935, the Board filed in the court below a petition for the enforcement of its order (R. 511–513). On March 17, 1936, respondent filed an answer praying that the petition of the Board be dismissed (R. 514–519). On June 30, 1936, the court below entered its decrees denying the petition of the Board and granting the petition of the respondent (R. 520) for the reason that the order of the Board transcended the power of Congress under the commerce clause of the Constitution. The court did not pass upon other constitutional objections urged by respondent.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

(1) In holding that the order of the Board herein was not one authorized to be made under the authority of Congress.

(2) In construing the Board's order in this case as being directed merely to respondent's production operations and production employees, rather than to the protection of respondent's interstate commerce against direct and substantial burdens brought about by industrial strife among any or all of respondent's employees, as well as others.

(3) In holding that the Act as applied herein is not an appropriate exercise of the power and responsibility of Congress under the commerce clause of the Constitution to protect interstate commerce from burdens and obstructions from whatever source.

(4) In holding in effect that the particular origin of industrial strife characterizes the nature of the resulting burden or obstruction upon interstate commerce, and in not judging the nature of such burden or obstruction, in its relation to interstate commerce, from the character and potentialities of the strife itself.

(5) In holding that the decision of this Court in *Carter* v. *Carter Coal Company,* Nos. 636 and 651, October Term, 1935, decided May 18, 1936, involving the Bituminous Coal Conservation Act of 1935, was controlling as to the non-applicability of the National Labor Relations Act under the facts of this case.

(6) In failing to hold that the Act is not in contravention of the Fifth Amendment or any other provision of the Constitution.

(7) In denying the petition of the National Labor Relations Board and granting the petition of respondent.

REASONS FOR GRANTING THE WRIT

This case presents issues similar to those involved in *National Labor Relations Board* v. *Jones & Laughlin Steel Company,* No. 419, present

term, in which a petition for a writ of certiorari has been filed herewith. In each case the application of the National Labor Relations Act to the particular respondent has been held to be beyond the power of Congress under the commerce clause of the Constitution—a decision of vital public interest. The Court is, therefore, respectfully referred to pages 10 to 14 of the petition in the *Jones & Laughlin* case for a statement of the reasons why the Government believes that a writ of certiorari should issue in these cases.

Wherefore, it is respectfully submitted that this petition for a writ of certiorari should be granted.

STANLEY REED,
Solicitor General.

CHARLES FAHY,
General Counsel,
National Labor Relations Board.

SEPTEMBER 1936.

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In the Supreme Court of the United States

OCTOBER TERM, 1936

Nos. 420–421

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

FRUEHAUF TRAILER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the United States Circuit Court of Appeals for the Sixth Circuit (R. 520–522) is reported in 85 F. (2d) 391. The findings of fact and order of the National Labor Relations Board (R. 45–59) are reported in 1 N. L. R. B. 68 (1936).

JURISDICTION

The decrees of the United States Circuit Court of Appeals for the Sixth Circuit were entered June 30, 1936 (R. 520). The petition for writs of certiorari was filed September 30, 1936, and was

granted November 9, 1936. Jurisdiction of this Court rests on Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925, and Section 10 (e) and 10 (f) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as here applied to this respondent, is a valid exercise by Congress of its power to regulate commerce with foreign nations and among the several States.

2. Whether the provisions of subdivisions (1) and (3) of Section 8 of the act, as applied to this respondent, are consistent with the Fifth Amendment.

3. Whether respondent may raise any question as to the validity of provisions or applications of the Act other than those here invoked against it, and, if so, whether the validity of such other provisions and applications is in issue here because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is printed as an Appendix to the brief in No. 365, *The Associated Press* v. *National Labor Relations Board,* and is also summarized in that brief at pp. 3–8.

STATEMENT

On October 4, 193 . and October 17, 1935, written charges against the Fruehauf Trailer Company, re-

spondent here, were filed with the Regional Director for the Seventh Region of the National Labor Relations Board, pursuant to Section 10 (b) of the Act and to Article II, Section 2, of the Board's Rules and Regulations. The charges alleged that respondent had engaged in, and was continuing to engage in, certain unfair labor practices affecting commerce within the meaning of Section 8, subsections (1), (3) and (4) of the Act. The charges were filed by United Automobile Workers Federal Labor Union No. 19375 and by certain of respondent's employees. (R. 4–9.)

On October 23, 1935, and October 29, 1935, the Regional Director for the Seventh Region issued complaints on the respective charges pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations. These complaints alleged unfair labor practices as to subsections (1) and (3) of Section 8, and fixed November 6, 1935, for a hearing upon these charges before a trial examiner. (R. 9–20.) Copies of the complaints were served on respondent on the same day upon which they were issued (R. 16, 20). On October 29, 1935, the Board ordered that the two complaints and proceedings thus instituted by the Regional Director be consolidated and heard by the Board itself, or one or more of its members, at the time and place previously fixed (R. 22–23).

On October 31, 1935, and November 5, 1935, respondent, appearing specially, filed motions to dismiss the respective complaints on the ground that

the National Labor Relations Board had no jurisdiction over it, and also on the ground that the National Labor Relations Act, as applied to it by the Board, contravened Article I, Section 1 of the Constitution and the First, Fifth, Seventh, and Tenth Amendments (R. 23–29). The motion to dismiss the first complaint, which had been filed on October 31, 1935, was overruled by the Board on November 4, 1935 (R. 28). On November 5, 1935, and November 7, 1935, respondent answered the two complaints, reserving and renewing in its answers its motions to dismiss (R. 29–39).

The hearing on the consolidated complaint was held on November 6, 7 and 8, 1935, before the full membership of the Board. Following the introduction of evidence on the jurisdictional issues raised by the motions to dismiss, the Board reaffirmed its overruling of the motion to dismiss the first complaint, and overruled the motion to dismiss the second complaint (R. 200).

On December 12, 1935, the Board issued its decision setting forth its findings of fact (R. 45–58), and entered the order which is here being reviewed (R. 58–59). These findings, with references to the evidence on which they are based, may be summarized as follows:

1. *The nature of respondent's business.*—Respondent is a Michigan corporation engaged in the manufacture, sale, assembly and distribution of commercial trailers and trailer parts and acces-

sories. Its plant and principal office are located in Detroit, Michigan, but it maintains 31 branch sales offices in 12 different States and has distributors and dealers in the principal cities of the United States. Respondent also maintains and operates a wholly-owned subsidiary in Toronto, Canada, where sales are made and where considerable assembly work is done with materials obtained partly from the Detroit plant and partly from Canada. (R. 46; 90.) Respondent is the largest concern of its kind in the United States, its daily production amounting to about 30 chassis, and its gross sales in 1934 amounting to $3,318,000. Its nearest competitor in that year sold only 37 per cent of that amount. (R. 46–47; 111.)

More than 50 percent by value of the materials from which respondent's trailers are built comes from States other than Michigan. A substantial part of the materials acquired from without the State (for example, brakes, tires, wheels, rims, bearings, tools, and spacer bands) is received in finished form. (R. 46–48; 72–73.) Some of the materials coming from other States is in unfinished form and further work is done on it in the Detroit plant before it is used in the trailers (R. 47; 73).

More than 80 per cent of the respondent's sales are of products shipped outside Michigan to other States and foreign countries. In the first ten months of 1935 such sales amounted to 112 carloads of products in addition to 400 or 500 trailers

and accessories which were hauled over the highways by trucks or tractors to points outside the State. These sales are accomplished through respondent's branch sales offices and dealers, and, in Canada, through its Canadian subsidiary. Except where a sale is made from branch office stocks for cash, all sales are subject to the approval of the Detroit office. Where sales are made for installment payments, the credit of the dealer or distributor is subject to the approval of the Detroit office. All notes or mortgages are made payable to the Fruehauf Trailer Sales Company, a wholly-owned subsidiary. (R. 46–47; 129.) It is the practice of the respondent to "consign" trailers and parts to distributors in various States and to retain title until payment is made (R. 47; 125).

In connection with its interstate sales respondent furnishes service both in the determination of customer's needs and in making mechanical repairs and adjustments (R. 47; 81). Many of its branch sales offices maintain a supply of parts which are shipped to them from the plant in Detroit (R. 48, 86). Mechanics employed by respondent are permanently stationed at many branch offices and traveling mechanics supervise their work. A substantial part of this work consists of changes in construction, weight and design. (R. 48; 461–462.) but the mechanics also install the necessary couplings, or "fifth wheels", on customers' trucks or tractors (R. 48; 86). Many of the trailers shipped to other States or foreign countries are disassem-

bled by respondent's shipping department before shipment and are then assembled again near the point of destination (R. 48–49; 98).

Respondent's aim is to maintain a steady flow of materials into and through its Detroit plant, and a steady flow of completed trailers out to its purchasers (R. 143, 147, 153, 220). It maintains for this purpose a planning division employing about twenty or thirty men, who lay out schedules for all operations (R. 48–49, 75, 145 *et seq.*). So closely are the various operations synchronized that on occasion work or shipment is delayed until required parts arrive to complete the assembly (R. 49).

2. *The unfair labor practices.*—The United Automobile Workers Federal Labor Union No. 19375, a labor organization within the meaning of Section 2 (5) of the Act, had been organized among the production and maintenance employees of the respondent's Detroit plant (R. 50; 418–420, 483). Early in 1934, respondent, through a detective agency, hired a detective named Martin. Respondent's vice-president testified that Martin was "a personnel man as we considered him", but there is no doubt that it was Martin's duty, as respondent's vice-president himself admitted, "to ferret out the union activities of the men", and to keep the respondent "informed of what was going on." (R. 50; 215–224, 301–304).

For purposes of deception, and in order to make him eligible for membership in the Union, respond-

ent gave Martin employment in the plant (R. 50; 215–216, 403). He thereafter joined the Union and eventually became its treasurer (R. 50; 328, 394). He was thus able to procure a list of all the members of the Union (R. 50; 395). He made reports more than once a week to respondent, and the lists of members which he furnished were given to respondent's superintendent (R. 50; 216, 224–5, 227–229, 232, 301, 304). With these lists in his hand, the superintendent went about the factory from time to time and warned various employees against union activities, and on July 8, 1935, threatened several with discharge (R. 54; 338, 365).

In October 1934 the superintendent sent for Peterson, a subforeman. After complimenting Peterson on his record, the superintendent attempted to persuade him to give up his membership in the Union and promised Peterson that the company would take care of him if he would see to it that the Union did not gain strength in the plant. In November of the same year, the superintendent again offered Peterson a better job upon the same conditions, and on this occasion also stated that the company would not tolerate the Union. (R. 54; 475.) Peterson, who interviewed applicants for work, was also instructed by his foreman to learn from them whether they belonged to a union or believed in unionism, and was told that if they did, they would be objectionable (R. 51; 478–479).

Completely armed by Martin with the necessary information, respondent determined to put a stop to all attempts on the part of its factory workers to form an efficient independent bargaining agency, and in furtherance of that purpose summarily discharged between July 2 and October 10, 1935, nine men, including all the officers of the union except Martin, the detective (R. 51, 54; 328). Two of these men, Stephen Spryter and Arthur Hillman, president and vice-president of the Union, respectively, were discharged before the effective date of the National Labor Relations Act (R. 51, 54; 393, 410). With respect to the remaining seven employees, the discharge in each instance was summary, taking place during the day and after the men had commenced work (R. 51; 308, 319, 325, 354, 375, 454, 480). In several instances, respondent's officials made clear to these employees on or about the time of their discharge that they were being discriminated against because of their union activity; for example, "You see you must stick with the company and not with the union" (R. 51; 309); "I warned you a year ago about this union business" (R. 53; 378). In other instances, the discriminatory character of the discharge was clearly manifested from the surrounding circumstances.[1] The employees discharged were engaged

[1] William Weinmann (R. 52; 319); Arthur Beck (R. 52; 325–327); Leonard Chaloux (R. 52; 354); J. L. Peterson (R. 53–54; 472–480); Wollery Coonrod (R. 53; 454–458).

in the production, assembly, or disassembly operations in the plant (R. 51–54).[2]

3. *Effect of the unfair labor practices.*—The results of these discharges and threats was resentment, unrest, bitterness, and confusion among the employees of the Detroit plant (R. 55; 340). After five of the men had been discharged, a special meeting of the union was called and a strike vote taken to compel the reinstatement of the discharged men, but fell short of the necessary two-thirds concurrence required by the Union's rules (R. 55; 476). The discharges also cowed and restrained respondent's employees from any attempt to bargain collectively (R. 55; 429).

Upon the basis of these findings, the Board concluded that respondent, by the foregoing discharges and threats of discharges and by the employment of a detective for purposes of espionage within the Union, had engaged in unfair labor practices within the meaning of subsection (1) and (3) of Section 8 of the Act (R. 58). By reason of the nature of respondent's operations, the Board also concluded that respondent's activities were unfair labor practices affecting commerce within the meaning of subsections (6) and (7) of Section 2 of the Act, in that they tended to lead to

[2] Finding 30, R. 52, erroneously states that Arthur Beck, one of the discharged employees, was employed in the shipping department. Apparently the Board had confused Beck's prior employment by respondent (R. 324–325) with the position from which he was discharged (R. 325, 330).

labor disputes burdening and obstructing commerce and the free flow thereof (R. 58).

The Board therefore issued an order (R. 58–59) requiring respondent to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and otherwise as guaranteed in Section 7 of the Act, and from discouraging membership in the Union or any other labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; to reinstate, with back pay, the 7 men discharged in the commission of the unfair labor practices; and to post appropriate notices. The complaint was dismissed with respect to the two employees who were discharged prior to the effective date of the Act (R. 59).

On December 17, 1935, respondent filed with the court below its petition to review and set aside the order of the Board, and on December 23, 1935, it filed an amendment supplementing its petition (R. 492–506). On February 2, 1936, the Board filed a return to the petition, praying that it be dismissed (R. 506–510). On December 19, 1935, the Board petitioned the court below for the enforcement of its order (R. 511–513). On March 17, 1936, the company filed an answer and return, praying that the petition of the Board be dismissed (R. 514–519). The proceedings were consolidated, and on June 30, 1936, the court entered its decrees holding

that the petition of the Board be dismissed and that the Board's order be set aside (R. 520–522).

ARGUMENT

We have shown in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* that the provisions of the National Labor Relations Act there, and here, involved are a valid exercise of the power of Congress to protect interstate commerce from burdens and injuries, and that they were properly applied, in that case, to an employer engaged in interstate commerce, with respect to his employees who were in, or intimately associated with, that commerce. We have also shown, in that brief, that the provisions of the Act there, and here, involved, do not conflict with the Fifth, Seventh, or First Amendments. Finally, we have shown in that brief that the provisions of the Act involved in the present case are separable from other provisions which have not been invoked against respondent, particularly Sections 8 (5) and 9. Accordingly, we respectfully refer the Court to the brief in that case for the discussion of those questions.

Moreover, in the brief for the Board in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* we have set out in detail the power of Congress to control, and consequently to prevent through this Act, industrial strife in the producing or manufacturing divisions of an enterprise largely engaged in and dependent upon the

free flow of interstate commerce. Rather than repeat the arguments there advanced, we shall only state briefly in the present brief the legal principles involved, and shall then indicate their application to this respondent, a large enterprise which occupies a predominant position in the manufacture and distribution in interstate commerce of automobile trailers.[3]

THE NATIONAL LABOR RELATIONS ACT, AS HERE APPLIED TO THIS RESPONDENT, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE

The National Labor Relations Act is an exercise of the power of Congress to protect interstate commerce from injuries caused by industrial strife. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Experience has shown this strife to be a burden upon commerce not only in its totality, but also because in many

[3] On the merits of the case, the Board made detailed findings (R. 50–57) with respect to the unfair labor practices engaged in by respondent and concluded that it had discharged seven employees under circumstances which constituted violations of Section 8, subsections (1) and (3) of the Act. Respondent offered no evidence in this regard at the hearings before the Board, although it participated in the hearing before the Board, although it participated in the Board's findings as to the facts, if supported by evidence, shall be conclusive (Section 10 (e)). The evidence clearly supports the findings (*supra*, pp. 7–10), and respondent is therefore not in a position to overthrow them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Company*, 291 U. S. 67, 73.

individual instances strife eventuated in conspiracies to affect commerce, or otherwise imposed direct and substantial burdens upon it.

Congress, in dealing with the evil of industrial strife, might have approached the problem by a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particular case, or it might have enacted a statute designed to eliminate the causes of the burdens in anticipation of their probable effect. The National Labor Relations Act follows the second alternative.

The Act does not, however, attempt to eliminate the causes of industrial strife in *all* enterprises. The statute is specifically directed to the elimination of the practices proscribed by Section 8 only when they are found to be "affecting commerce" (Sec. 10 (a)). The phrase "affecting commerce" is defined in Section 2 (7) as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce". These jurisdictional limitations, obviously patterned upon the decisions of this Court under the commerce clause, are manifestly a direction to the Board to exercise the national power within the limits permitted by the Constitution.

Thus the validity of any specific application of the preventive measures of this Act depends upon whether industrial strife resulting from the prac-

tices in the particular enterprise under consideration would be of the character which Federal power could control if it occurred. If strife in that enterprise could be controlled, certainly it may be prevented. *Stafford* v. *Wallace,* 258 U. S. 495, 525. In the Board's brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation,* at p. 39, we pointed out the three situations in which Congress may exercise its power to control burdens and obstructions on interstate commerce after they have arisen. We submit that in the application of the Act to respondent each of these three situations is presented. Of course, the existence of any one of the three situations is sufficient to sustain the jurisdiction of the Board.

I

It is well settled that an industrial dispute involving an intent to restrain commerce is within the control power of Congress, even though arising out of local activity. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U. S. 37; *Duplex Printing Co.* v. *Deering,* 254 U. S. 443; *Loewe* v. *Lawler,* 208 U. S. 274. Consequently, where the situation in a particular enterprise presents the likelihood that a labor dispute, if it occurred, would involve an intent to restrain commerce, then the Board can apply the preventive measures of this statute to that enterprise. It is

not claimed in the present case that there is any proof of the existence of an actual intent to affect commerce. However, there is much evidence that in this particular enterprise such a definite intent might reasonably be expected to arise.

Respondent is, as the statement shows (pp. 4–7, *supra*) a national enterprise, with a manufacturing plant in one State and a large number of branch sales offices, distributors, and dealers in many other States. In an enterprise of this type industrial strife in any division of the enterprise is apt to involve a purpose to promote collective action among employees in other divisions of the enterprise in order to increase the bargaining power of all the employees as against the common employer. *Cf. Loewe* v. *Lawler*, 208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37. Moreover, as the current automobile situation indicates, there is great likelihood of sympathetic action by the employees of the various branches of the industry even though not employed by the same companies, for the purpose of bringing pressure to bear on the industry as a whole.

We submit, therefore, that there is reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, involve an intent to affect commerce, and that the Board was justified in holding that the preventive measures of the

National Labor Relations Act should be invoked against respondent in order to anticipate that industrial strife which would be within the control power of Congress.

II

This Court has recognized that Congress may exercise control over some industrial disputes even where intent cannot be or is not proven. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410–411; *Industrial Association* v. *United States*, 268 U. S. 64, 81; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, 471. Cf. *United States* v. *Patten*, 226 U. S. 525. The opinions of the Court do not clearly define this category of industrial strife with the necessary effect of substantially burdening interstate commerce However, in the brief in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, at p. 51, we have suggested three possible constructions which might be adopted: (1) Industrial strife has the necessary effect of burdening or obstructing interstate commerce when it occurs in an enterprise lying within a well-defined "stream" or "flow" of commerce; (2) industrial strife is of that type when its effect would be to restrain a substantial proportion of all the commerce in the particular commodity; or (3) industrial strife is of that type when its effect would be to prevent interstate sales or shipments of a substantial volume of goods which would otherwise move in interstate commerce.

Although not so clearly within a stream or flow of commerce as respondent in No. 419, we believe that industrial strife in respondent's enterprise woud be within the control power of Congress even if necessary effect were limited to the first of these three constructions. If the second construction be adopted, clearly industrial strife in the respondent's enterprise would be included, and it is equally clear that it would be within the third construction.

Respondent's enterprise is the focal point for a stream or flow of interstate commerce. Over 50 percent by value of the raw, unfinished and other materials which are used by the respondent in the construction of trailers are shipped to it from other States (R. 72, 117). Steel in large quantities is brought from Illinois and Ohio (R. 113), axle forgings from Ohio (R. 114), brake equipment from Indiana and Ohio (R. 115–116) and lumber from the southern States (R. 116). Many of the parts used by respondent are acquired in finished form, such as rims, wheels, bearings, tires, springs and lights (R. 72–73, 116–117).

Nor does the interstate stream cease at respondent's plant. More than 80% of respondent's sales are to customers outside the State of Michigan (R. 153). The efficient operation of respondent's enterprise requires the maintenance of a steady flow of materials into and through its plant, and a steady stream of trailers out to its purchasers (R. 153). Indeed, respondent makes

every effort to maintain this flow. Raw and unfinished materials are secured as closely as possible to the time when they are needed in the active course of its operations (R. 143); materials are shipped to respondent according to a schedule laid out by it (R. 147). Occasionally work has to be held up for several days until materials are received (R. 134–135). Respondent maintains a planning department employing between twenty and thirty men who supervise the inventory and route the materials through the plant from the time they are received until they are turned over to the shipping department as finished trailers (R. 75, 145 *et seq.*)

Respondent's enterprise thus exhibits a large and constant movement of goods into the Detroit plant; the briefest possible pause there, in part for manufacture, and in part merely for the assembly of completed parts, and immediate shipment to all parts of the United States. We submit, therefore, that industrial strife in respondent's Detroit plant would have the necessary effect of burdening and obstructing interstate commerce within the first construction suggested above (p. 17, *supra*), and is therefore within the control power of Congress. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1; *Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420.

If the second suggested definition of industrial strife with the necessary effect of burdening and obstructing interstate commerce be

adopted—*i. e.*, strife which has the effect of preventing or disrupting a substantial proportion of all the interstate commerce in a particular commodity, it is clear that strife in respondent's plant would be included within the control power of Congress. Respondent is the largest concern of its kind in the United States. Its gross sales in 1934 amounted to $3,818,000 (R. 123), and its largest competitor in that year sold only 37 percent of that amount (R. 111). In 1935 the value of respondent's product was approximately 20–25 percent of the total for the industry. See U. S. Bureau of Census, *Census of Manufactures* (1935), Nos. 1407–1408, p. 8. It is apparent that industrial strife in respondent's plant would immediately curtail the movement from and into the channels of commerce not only of a substantial volume of goods, but also of a substantial part of the interstate commerce in the trailer industry as a whole. Consequently, we submit that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, have the necessary effect of substantially burdening interstate commerce. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Industrial Association* v. *United States*, 268 U. S. 64; *International Organization* v. *Red Jacket C. C. & C. Co.*, 18 F. (2d) 839 (C. C. A. 4th), certiorari denied, 275 U. S. 536. Cf. *United States* v. *Reading Co.*, 226 U. S. 324, 370. Accordingly, either under definition (1) or definition (2), *supra*, p. 17, the Board was justified in holding that the

preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife burdening commerce which would be within the control power of Congress.

III

There remains one further ground upon which the order of the Board in the present case may be supported. This Court has on many occasions enunciated the principle that where Congress, after investigation, directs its legislation to the prevention of certain activities, even though usually only of local concern, which recur with such frequency as to constitute an undue burden on commerce, those activities may be subjected to the control power of Congress. *Stafford* v. *Wallace*, 258 U. S. 495, 520–521; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1, 40; *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, 469. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

We have already described, in the briefs for the Board in Nos. 365 and 419, the recurring and widespread character of the burden on interstate commerce resulting from industrial strife in enterprises which receive a substantial part of their materials from, and send a substantial amount of their products in interstate commerce. We have also described the close and substantial relationship which industrial strife in such enterprises bears

to interstate commerce, the efforts of the Federal Government, by various devices, to mitigate it, and the studies made over a long period of years which eventuated in this Act, the basic principles of which have already been sustained by this Court in their application to the prevention of industrial disputes affecting the railroads. *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548.

If, as we contend, the control power of Congress extends to recurrent industrial strife in these interstate enterprises, there can be no doubt that the order of the Board in the present case was within its jurisdiction. Respondent is dependent for over 50 percent of its materials upon the products of States other than Michigan (R. 72, 117). Further, over 80 percent of its finished trailers are sold to customers outside of that State (R. 153, 162, 165). It maintains 31 branch sales offices in 12 other States and a wholly owned subsidiary in Canada (R. 91), and has distributors and dealers in the principal cities of the United States (R. 81). We submit, therefore, that industrial strife in respondent's enterprise is of the character which, by its recurrence, comes within the control of Congress under the principle stated above. Consequently, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife burdening com-

merce which would be within the control power of Congress.

CONCLUSION

Wherefore, the judgment of the court below should be reversed, and the cause remanded with instructions to grant the petition of the Board for the enforcement of its order and to dismiss the petition of respondent.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1936

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. FRUEHAUF TRAILER COMPANY, *Respondent*.	No. 420
NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. FRUEHAUF TRAILER COMPANY, *Respondent*.	No. 421.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF OF FRUEHAUF TRAILER COMPANY, Respondent

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POINT I. The National Labor Relations Act is Not a Regulation of Interstate Commerce but of
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Supreme Court of the United States

OCTOBER TERM, 1936

NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. FRUEHAUF TRAILER COMPANY, *Respondent*.	No. 420
NATIONAL LABOR RELATIONS BOARD, *Petitioner*, v. FRUEHAUF TRAILER COMPANY, *Respondent*.	No. 421

On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit

BRIEF OF FRUEHAUF TRAILER COMPANY, Respondent

Statement of Case

These proceedings involve the validity and application of the National Labor Relations Act (Public No. 198, Seventy-Fourth Congress of the United States, First Session, approved July 5th, 1935; 29 U. S. Code, Section 151 et seq.) in relation to employees engaged solely in manufacturing operations in the State of Michigan.

Parties Involved

Respondent is incorporated under the laws of Michigan, and is primarily engaged in the business of manufacturing trailers, semi-trailers, carryalls and parts and accessories therefor. The trailers manufactured by Respondent are commercial trailers, as distinguished from camp trailers. The principal office of the Company and the factory, where its manufacturing operations are conducted, are located in the City of Detroit, Michigan (R. 70-71).

The National Labor Relations Board, at the time of the hearing, consisted of three members, J. Warren Madden, Chairman, Edwin S. Smith and John M. Carmody, who were appointed to office by the President on October 24th, 1935, pursuant to Section 3 (a) of the National Labor Relations Act. Mr. Carmody has since resigned and has been succeeded by Donald Wakefield Smith.

Proceedings Before the National Labor Relations Board

(a) The Charge Pursuant to Which the Complaints of National Labor Relations Board Were Issued.

On October 4th, 1935 the United Automobile Workers Federal Labor Union No. 19375, affiliated with the American Federation of Labor, and six former production and manufacturing employees of Respondent filed a charge with the Board, by their attorneys, Charlton Ogburn and Arthur E. Reyman, averring that the Respondent is engaged in the manufacture of trailers—

> "and is engaged in commerce among the states in its manufacturing plant in Detroit in that its

materials come from other states and are manufactured into trailers for shipment into other states; and it is otherwise engaged in interstate commerce (R. 4)."

In this charge it was further averred that Respondent had discharged these six employees because of their union membership and refusal to resign therefrom, that the result of said discharges would be to create industrial unrest, which would burden and obstruct commerce, and that Respondent was thereby engaged in alleged unfair labor practices within the meaning of Section 8, sub-sections (1), (3) and (4), of the Act. A similar charge was filed with the Board under date of October 17th, 1935, by the United Automobile Workers Federal Labor Union No. 19375 and another employee of Respondent by the same attorneys, containing similar averments in respect to that employee as were embodied in the first charge in respect to the other six employees (R. 7).

These charges were filed pursuant to Section 10 (b) of the Act. Copies of these charges were never served upon Respondent, nor were they furnished to Respondent or its attorneys prior to the receipt of the printed Record in the Court below.

(b) The Complaints of the National Labor Relations Board.

On October 23rd, 1935, the Board, by its Acting Regional Director for the Seventh Region, issued a complaint against Respondent at Detroit (case VII-C-1) (R. 9). In this complaint the Board alleged that Respondent had discharged and refused to reinstate six production and manufacturing employees because of their affiliation and

activity in United Automobile Workers Federal Labor Union No. 19375. The Board in this complaint further averred that Respondent is engaged in the production, sale and distribut n of trailers, semi-trailers, carryalls, trailer parts and trailer accessories; that Respondent is the largest organization in the trailer industry, and that its operations constitute about thirty-five per cent (35%) of the entire industry; that Respondent purchased materials which were shipped to its plant at Detroit from other states, and that the trailers produced by it at the Detroit plant were sold and transported by Respondent in interstate commerce to points outside of the State of Michigan, "constituting a continuous flow of commerce among the several states" (R. 10). The Board in its complaint concluded that the discharge of the six employees, production and manufacturing workers at the Detroit plant, constituted unfair labor practices within the meaning of Section 8, sub-sections (1) and (3), of the Act, occurring in commerce among the several states, and that "on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof" (R. 15).

On October 29, 1935 the Board issued another complaint against Respondent, based upon the charge of the seventh employee, Peterson, dated October 17, 1935. This complaint (case VII-C-3) also involved a manufacturing and production employee and contained similar allegations to those set forth in the complaint of the Board in case VII-C-1 involving the six employees hereinabove mentioned (R. 17). To each of these complaints (cases VII-C-1 and VII-C-3) was attached a notice designating the hearing

before the Board on November 6th, 1935. The Board by order of October 29th, 1935, consolidated the cases VII-C-1 and VII-C-3 for hearing (R. 22).

(c) Proceedings Before National Labor Relations Board.

Respondent, appearing specially, filed a motion to dismiss the complaint in case VII-C-1 on the grounds that the Board lacked jurisdiction over both the subject-matter and the person of Respondent. Attached thereto and in support of the motion was the affidavit of Earl L. Vosler, Vice-President in charge of manufacturing operations of Respondent, setting forth the fact that the six employees covered by the complaint were employed in the production and manufacturing operations of Respondent, and that in these operations and in their relationship with Respondent neither they nor Respondent were engaged in interstate commerce and, therefore, were not subject to the regulations of the Congress of the United States or the jurisdiction of the Board. This and various other jurisdictional and constitutional objections were set forth in the motion filed October 29th, 1935 (R. 23) and are the same jurisdictional and constitutional objections to the Act and to the application thereof as are contained in the petition to review and in the answer and return to the Board's petition to enforce, in the Circuit Court of Appeals.

Without affording Respondent an opportunity to offer proof or to be heard thereupon, the Board on November 4th, 1935, entered an order overruling the motion of Respondent to dismiss case VII-C-1 (R. 28). Thereafter, on November 5th, 1935, Respondent filed a motion to dismiss case VII-C-3, similar in content to the motion to dismiss case VII-C-1. Answers in both of the cases (VII-C-1

and VII-C-3) (R. 29, 37) were served upon local counsel for the Board, to be filed by him conditionally, only in the event of an adverse ruling by the Board of the motions to dismiss (R. 67). In these answers, Respondent reserved and relied upon the same jurisdictional and constitutional objections to the Act and to the application thereof as were raised by the motions to dismiss.

The hearing of the consolidated cases (VII-C-1) and VII-C-3) by the Board, sitting at Detroit, commenced the next morning, November 6th, 1935. The motion to dismiss case VII-C-3, then pending and undetermined, and the motion to dismiss case VII-C-1, thereupon renewed, were submitted to the Board by counsel for Respondent upon the opening of the hearing. The testimony of Earl L. Vosler, Vice-President of Respondent in charge of manufacturing, was thereupon taken in support of one of the grounds of the motion attacking the jurisdiction of the Board over the subject-matter, to-wit:

> "2. All of the Fruehauf Trailer Company's manufacturing plants are located in, and all of its manufacturing operations are conducted in the City of Detroit, State of Michigan. The employees covered by the complaint of the National Labor Relations Board hereunder were employed in the production and manufacturing operations of the Fruehauf Trailer Company, and in these operations and in their relationship with Fruehauf Trailer Company, neither they nor Fruehauf Trailer Company were or are engaged in interstate commerce, this relationship between such employees and Fruehauf Trailer Company being incident to its manufacturing operations, to wit, the transformation of and fashioning of raw and unfinished materials through an involved and intricate manufacturing process into a different and completed

> form, to wit, a finished trailer or parts thereof, which operation is local in character and is not subject to regulation of the Congress of the United States or to the jurisdiction of the National Labor Relations Board." (R. 24).

In the testimony (R. 66-84) of Vosler is a complete analysis and description of the business of Respondent, of the purchase of raw materials and other materials prior to the manufacturing operations. Then there is an explanation and photographic description of all of the production and manufacturing operations at the plant in Detroit and the nature of the work performed by the seven production employees involved in these proceedings. After describing the manufacturing operations, Vosler then told of the sale and distribution of the completed trailers succeeding the manufacturing operations. Counsel for the Board extensively cross-examined Vosler (R. 84-162), and then offered testimony as to certain shipments, by rail and by truck, of the finished trailers and parts thereof (R. 162-167) to close the proof in respect to the interstate commerce phase of the case (R. 162).

After oral argument, the Board overruled, and affirmed its previous order overruling, the motion to dismiss case VII-C-1 and overruled the motion to dismiss case VII-C-3, to which rulings and orders an exception was noted (R. 200). The answers of Respondent to cases VII-C-1 and VII-C-3 (consolidated for hearing), renew the motions to dismiss and reserve all jurisdictional objections to the proceedings as set forth in the motions (R. 29, 37) and were filed without waiving the exception to the ruling of the Board denying the motions in accordance with Article II, Section 17, of the Rules and Regulations of the Board then in force.

The answers having raised the same jurisdictional objections as the motions, counsel stipulated that all of the evidence introduced and admitted on the motions to dismiss be incorporated in the Record as evidence on the issues raised by the complaints of the Board and the answers of Respondent, which stipulation was approved by the Board (R. 67, 200, 487).

(d) Labor Relationship of the Fruehauf Trailer Company and Alleged Unfair Labor Practices.

Respondent, although incorporated in 1918, traces its beginning to the small blacksmith shop and wagon works owned and operated in Detroit, Michigan, by August C. Fruehauf in 1897. With the growth and development of the automobile business the trailer business grew up—and trailers were developed from clumsy, slow-moving wooden trailers to the present steel-framed, covered body, power-braked, scientifically engineered trailer. In the development and growth of Respondent before and after its incorporation, August C. Fruehauf, himself, worked in the first small shop with the men employed by him (R. 70).

As this small business grew and developed, his sons, Harvey (now President of the Company) and Harry (now Vice-President of the Company) and Earl L. Vosler (now Vice-President in charge of the manufacturing) came into the business and took a hand in its development. As the business grew, more and more men were employed by the Company and the earnings for the most part were continually put back into the business for larger factory, more machinery and equipment, for larger production and for more and more employment of men. From the small blacksmith shop and wagon works

employing but few men, the Company has grown so that today the Respondent is the largest trailer company in the industry. At the time of the hearing the factory covered about nine acres and approximately 700 men were employed in the manufacturing and production of trailers (R. 70, 71). About 200 people are employed in other divisions of the business, making a total employment as of the time of the hearings of about 900 people (R. 123).

At the time of the hearing, the Respondent had only one factory and all of its manufacturing operations were exclusively carried on at that plant in the City of Detroit, Michigan (R. 71). The proof shows that at the time of, and prior to, the hearing before the Board, the workmen in the manufacturing and production departments of Respondent received "higher wages than those paid to similar classes of employees by companies engaged exclusively in the manufacture of trailers" (R. 80, 276), and that "as compared with a number of other industries that are more seasonable" and "compared with the average industry in the City of Detroit our men do have more steady work than most of the men in the other plants . . . . throughout the entire year" (R. 271). The superintendent and the foremen in the factory always have been ready to discuss any problem of employment with employees, and the Company built up its business and organization on the principle that production and efficiency increase where employees are earning good wages and are satisfied (R. 278).

Even certain of the complainants, discharged employees of the Company, admitted that the workmen were treated fairly. One said that the foreman Rosenbusch "was at all of the times nice to him" (R. 311); and another of these discharged employees when asked whether the

Company treated him well at all times, answered "fine" (R. 458). Still another employee, not one of the complainants but a union member, called by the Board to testify, said "they have treated me all right. At one time I had a lot of trouble about something, and I went up to the superintendent and he sent me up to Mr. Vosler, and Mr. Vosler helped me . . . When I was going to lose my house he got a lawyer to help me out," and the Company lawyer helped "save something by it" (R. 366, 367). They were always afforded an opportunity to discuss matters of their employment with their foreman (R. 314, 321, 366, 426, 458). They admitted that the men knew of the Company rule for the workmen, that "if you don't get satisfaction out of your foreman, come in and see the superintendent," and that the superintendent had never refused to discuss matters of employment with any of them (R. 426). It was further admitted by these men that their wages had been increased between four and five times from the depression period of 1933 to the time of their discharge, and that many of these increases were factory-wide increases (R. 312, 321, 425). The wages paid were the highest in the trailer industry (R. 80, 276).

The United Automobile Workers Federal Labor Union No. 19375 was organized in May of 1934 (R. 418) by outside organizers not connected with Respondent, but representing the American Federation of Labor (R. 419, 420). The President of the Union, Sprytzer, claimed that about forty Fruehauf production employees joined the Union at that time (R. 420), and stated that these men were urged by the American Federation of Labor organizers to make an active drive for members at the Fruehauf plant (R. 420). A $2.00 initiation fee was charged a member upon joining the Union, one-half of which was paid to the American Federation

of Labor and the other half retained by the local Union. In addition there are monthly dues (R. 435, 436).

The management warned union men against agitating and soliciting members during working hours, because it stirred up arguments among the workers who refused to join and impaired the morale and efficiency of the shop (R. 247, 248, 281, 312, 322). The continued violation of this rule, despite warnings, was the cause for the discharge of two of the employees here involved.

The Board in its findings said that the Union had "177 active members and about 100 members who at one time or another paid dues and did not usually attend meetings. The production and maintenance men at respondent's factory at that time numbered about 400" (R. 50). On what testimony the Board bases this finding is difficult to determine. When asked about the union membership, Sprytzer, President of the Union, either showed an astounding lack of knowledge for the President of a union who was active in soliciting new members, or an obvious evasiveness.

> "Q. What was the largest membership you ever had of that Union?
>
> "A. I don't know whether I have to answer that.
>
> "Mr. Klein: I think you do.
>
> "Chairman Madden: I think that is a fair question.
>
> "A. (Continuing): *To tell the truth, I don't know.*
>
> "Q. (By Mr. Klein): Did you have one hundred members?
>
> "A. Over, I think.
>
> "Q. Did you have one hundred and twenty members?
>
> "A. I would say—

"Q. Just about 120 members?

"Mr. Patterson: Now, wait a minute.

"A. (Continuing): More than that.

"Q. (By Mr. Klein): 140 members?

"A. I don't know the exact number.

"Q. Well, was it less than 150?

"A. You see, the recording secretary never let us get into his books, not even myself.

"Q. Weren't you president of that local?

"A. I was.

"Q. Weren't you interested in knowing how many members you had?

"A. Yes, sir; I was" (R. 421).

And only after he was confronted with a telegram of the American Federation of Labor claiming to represent "all of the employees in your plant" (Exhibit 16, R. 443) did Sprytzer then try to claim that a majority of the production employees belonged to the Union.

"Q. Did you ever have on your rolls more than 120 members?

"A. Yes.

"Q. When?

"A. I do not recall.

"Q. I just asked you before, how many you had?

"A. I do not recall.

"Q. What is the most you ever had on your rolls?

"A. *I do not remember.*

"Q. You do not remember?

"A. No.

"Q. You told me, I believe, that 120 was about the most you had?

"A. I do not know.

"Q. You would not say that you had more, would you?

"A. I do not know.

"Q. You would not say that there were not any men in the plant who did not belong to the union, would you?

"A. Oh, yes, there was.

"Q. There were?

"A. Yes.

"Q. But this says that you represent them all?

"A. That is what it says" (R. 444).

Union membership records were not made available. The President of the Union did not choose to know how many members there were. The only suggestion that there were 177 members came from Peterson, whose testimony was of doubtful probity or value.

Nor is there any proper basis for the Board's finding that there were only 400 men in the manufacturing and production departments. The only proof to this effect was the following offered by the discharged employee, Peterson:

"Q. • • • How many employees did this company employ in the production and maintenance departments?

"A. Well, I don't think—of course *I have no definite figures.* I don't see any reason why they can't *find out from a better source than me*, but *I don't think* they have over 400, *or I don't think* that many employees, that is, I don't mean bellhops or telephone operators or salesmen or people working outside the factory or people who were not eligible for our union. I mean just the factory workers, production workers" (R. 484).

Peterson admitted he had no definite figures, and that there was a better source from which to obtain information. He predi ated his testimony on a guess and not on facts or figures. But the Board nevertheless based its findings on this testimony, although the same pro-

duction employees (including Peterson) filed a charge with the Board (R. 4, 7) stating that the Company employed approximately 600 employees, and Earl L. Vosler, Vice-President of Respondent in charge of manufacturing, who had access to the records of the Company, testified that at the time of the hearing 700 men were employed in the manufacturing and production departments of the Company, and that altogether the Company employed approximately 900 people (R. 71, 123).

(e) Unfair Labor Practices Charged by Board.

In the complaints filed by the Board (R. 4, 7), it is alleged that Respondent discharged the seven employees involved in this proceeding because of their Union membership and activity; that these acts of Respondent would create industrial unrest, and that these acts would, "on the basis of experience in the aforesaid plant and others in the same and other industries, burden and obstruct such commerce and the free flow thereof, and have led and tend to lead to labor disputes burdening and obstructing such commerce and the free flow thereof" (R. 15, 17). The employment of a factory detective to report union agitation during working hours was stressed by the Board at the hearing as a practice that would stir up unrest and burden commerce.

The only testimony as to the experience at the Fruehauf plant, elicited by the Board, negatived any showing of labor difficulties and showed that since the date of its first operations there had not been a strike at the plant which hampered its operations (R. 136):

> "Q. (By Chairman Madden): Mr. Vosler, what would be the effect upon interstate commerce of a successful strike in those departments

> of your plant where these men named in the complaint work?
>
> "A. Well, I do not know, Mr. Chairman. I cannot imagine anything like that. *We have never had a delay of any kind in our operations, and I do not know just what the result would be.*"

Nor was there any showing that the discharges caused a strike at the plant or caused a delay in operations. The proof of the complaining discharged workers show that only 35 men voted for a strike out of a total of 700 production and manufacturing employees, and that only 67 employees voted at the Union meeting; that the suggestion of a strike was voted down (R. 430) even after the American Federation of Labor organizer explained the strike program (R. 438). The proof further shows that thereafter and until the time of the hearing that there were no reports of dissension or dissatisfaction spread around the factory (R. 278).

In reply to the charge of unfair discrimination in the discharge of the seven employees involved in these proceedings, Respondent in its answers (R. 34, 35) said:

> " • • • that from the period of June 25th, 1935, to July 21st, 1935, because of a then decided falling off of its business and the consequent reducing of its manufacturing operations that seventy-two (72) production and manufacturing employees were laid off or dismissed, including the six (6) employees specifically named in the complaint. Further answering said paragraphs of the complaint, Respondent, Fruehauf Trailer Company, shows that wherever said men were laid off or otherwise dismissed, including those men named in the complaint, that said Respondent, Fruehauf Trailer Company, reduced its force in such a manner as to retain those who in its judgment were the most efficient and capable employees and with a view of continuing

the employees who could and would most efficiently perform their work, who showed the greatest interest in their work, who appeared to have the best interest of Respondent and the success of its operations at heart, and who would most harmoniously work with others in the various production departments to the end that its production and manufacture of trailers would carry on successfully and profitably and would inure to the benefit of the Respondent and to the employees of the Respondent who would benefit by the continued and successful operation of the business of Respondent by a continued and steady employment."

Similar answer was made in Case VII-C-3 involving the seventh employee (R. 38).

Witness Vosler was called by the Board in this phase of the case. After the examination by the Board, counsel for Respondent elicted proof from him in support of the averments in the answer as to the reason for the discharge of the seven employees involved in this case (R. 235, 248, 258, 265). The testimony showed that in discharging and laying men off during a slack period of production, the same standard was applied to Union and non-Union men (R. 265). Union men were retained on the rolls as well as non-Union men (R. 265, 281, 276, 269), the determining factors being the efficiency of the workman, his cooperation and whether or not he appeared to have the Company's best interests at heart in performing his duties (R. 265, 267).

All of the testimony in respect to the alleged unfair labor practices, except that adduced from Vosler, was developed by the Board mainly through discharged employees who were openly hostile to Respondent.

Respondent called no witnesses and offered no proof on the question of alleged unfair labor practices, except that brought out on cross-examination of discharged employees, and from witness Vosler, called by the Board on this phase of the case. The Company at all times relied upon its position that the Board had neither jurisdiction over the subject-matter of these proceedings, nor over the person of Respondent, that the Act, as a whole, was invalid and the attempted application thereof by the Board to Respondent in these proceedings was unconstitutional.

It is these constitutional and jurisdictional questions which are raised by the petition in the Circuit Court of Appeals to review and reverse the order of the Board (R. 492, 496).

(f) Decision and Order of National Labor Relations Board.

On December 12, 1935, the Board rendered its decision (R. 45-59), and embodied as a part thereof an order (R. 58) directing Respondent (a) to cease and desist from certain acts relating to the discharge of employees, interference with employee activities and membership in the Union; and (b) to take certain affirmative steps by way of re-employing the seven discharged employees, the complainants to the Board, with pay from the date of discharge to the date of reinstatement, and to post notices to its employees, in a conspicuous place in its plant, stating that it had ceased and desisted from doing the acts complained of in these proceedings.

On December 17, 1935, Respondent filed its petition in the Circuit Court of Appeals to review, reverse and set aside the order of the Board (R. 492), which

petition was supplemented by amendment filed December 23, 1935 (R. 500), to which petition and amendment the Board filed its return under date of February 2, 1936 (R. 506). The Board filed its petition for enforcement of its order under date of December 19, 1935, to which Respondent filed its answer and return under date of March 17, 1936 (R. 514). The petition for review (No. 7291) and the petition for enforcement (No. 7297) of the order of the Board of December 12, 1935, were consolidated for argument and hearing.

Decision Below

The Sixth Circuit Court of Appeals held that the Order of the Board in the case at bar—

> "undertakes to regulate and control the Trailer Company's relations and dealings with its employees engaged in the production and manufacture of trailers at the company's plant in Detroit and does not directly affect any of the activities of the Trailer Company in the purchasing and transporting to its plant of materials and parts for the manufacture and production of trailers or in the shipping or selling of such trailers after they are manufactured. It was issued under the authority of the Act of Congress of July 5, 1935, known as the National Labor Relations Act. The authority for the Act is claimed under the commerce clause of the Constitution. Since the order is directed to the control and regulation of the relations between the Trailer Company and its employees in respect to their activities in the manufacture and production of trailers and does not directly affect any phase of any interstate commerce in which the Trailer Company may be engaged, and since, under the ruling of *Carter v. Carter Coal Company*, 298 U. S. 238 (decided May 18, 1936), the Congress has no authority or power to regulate or

control such relations between the Trailer Company and its employees, the National Labor Relations Board was without authority to issue the order (See *National Labor Relations Board v. Jones & Laughlin Steel Corporation* (5 C.C.A.), decided June 15, 1936)."

85 Fed. (2nd) 391 (R. 521-2).

Appropriate decrees were accordingly entered by the Circuit Court of Appeals. The Petition to Review, Reverse and Set Aside the Order of the Board was granted, and the Order was set aside (No. 7291), and the Petition of the Board to Enforce its Order was dismissed (No. 7297) (R. 520). Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit were issued by this Court at the instance of the Board on November 9th, 1936.

ARGUMENT

This being one of a series of cases all to be submitted at the same time in each of which is drawn in question the validity under the Constitution of the National Labor Relations Act and the action of the National Labor Relations Board thereunder in relation to a particular employer and this case being next to the last of such series it is believed that it will be more helpful to the Court for counsel in this case in such part as seems feasible to refer to and adopt the discussion in the briefs in the prior cases possessing the nearest similarities to this case supplementing such discussions in the other briefs with any additional thoughts or different attitude of approach and setting forth an original and complete discussion of only those points or matters wherein this case possesses its own particular facts or individual characteristics.

The briefs to which reference will be so made and the discussions therein adopted on particular points to be hereinafter specifically designated are

Brief on Behalf of Petitioner, The Associated Press, in No. 365, and

Brief for Respondent, Jones & Laughlin Steel Corporation, in No. 419.

These will for convenience be respectively referred to as the "Associated Press Brief" and the "Jones & Laughlin Brief."

Likewise the Brief for the National Labor Relations Board will be referred to as the "Board Brief," it being understood that such reference will be to the Brief in the Fruehauf case unless otherwise specifically stated in any particular reference.

Questions Presented

The statement of the questions presented in the Board Brief is accepted by Respondent, i.e., the questions there stated are all involved. But Respondent further insists that the additional questions stated as No's. 3 and 4 in the Board Brief in the Associated Press and Jones & Laughlin cases are also involved in this case. And Respondent prefers the statement in the Associated Press Brief, page (17), and in the Jones & Laughlin Brief.

Summary of Argument

I. The National Labor Relations Act is not a regulation of interstate commerce but of

(A) industry in general, and

(B) labor relationships generally

(by imposing "collective bargaining") and is in excess of the power of Congress under the Commerce Clause and violative of the Tenth Amendment and hence is void in its entirety. (Discussed infra 22 to 39)

II. In its manufacturing operations Respondent and its Production Employees are not

(A) in commerce,
(B) in the "stream," "current" or "flow" of commerce, and
(C) do not "affect commerce"

and hence are not subject to Federal control.

(Discussed infra 40 to 87)

The findings of the Board in relation to the Respondent and its discharged employees (which are at all of material consequence) are arbitrary and capricious and without substantial basis in the evidence.

(This is not discussed as a separate and independent proposition but runs all through the discussion under Point II.)

III. The National Labor Relations Act is repugnant to and in violation of the Fifth Amendment to the Constitution of the United States both in respect of procedural rights and of substantive rights.

(Discussed infra 88 to 110)

IV. The Act denies the right of trial by jury in violation of the Seventh Amendment.

V. The Act violates the First Amendment which guarantees to citizens freedom of speech.

Points IV and V are thoroughly discussed in the Associated Press Brief pages (93) to (102) both inclusive. Those arguments are adopted and these points rested thereon without further discussion herein.

POINT I.

The National Labor Relations Act is not a Regulation of Interstate Commerce but of

(A) Industry in General, and

(B) Labor Relationships Generally

(by imposing "collective bargaining") and is in excess of the power of Congress under the Commerce Clause and violative of the Tenth Amendment.

The discussion of the Associated Press Brief (pp. 18 to 36 both inclusive) is adopted in toto.

The point is also discussed in the Jones & Laughlin Brief and such discussion likewise adopted.

A. Industry in General Regulated by Act.

The National Labor Relations Act is on its face an attempt to impose a statutory requirement of collective bargaining, which will be binding upon all of the industries throughout the country.

The law was patterned after and intended to carry on and supplement the provisions of Section 7 (a) of the National Industrial Recovery Act after it expired on June 16th, 1935. "Congressional Record, Vol. 79, No. 101, Wednesday, May 15th 1935, Senate p. 7855:

> "Mr Wagner: Of course, the N. I. R. A. has section 7 (a) in it; but this bill proposes in the first place to define the rights of labor more clearly; and, secondly, to implement them by certain enforcement sanctions.
>
> "Mr. McCarran: Just one further inquiry. Am I correct in saying that even though the N.R.A. should pass out of existence with section 7 (a) as

it now stands in the N.R.A. Act, we should have all the beneficial results that might flow from section 7 (a) if we should enact the pending bill?

"Mr. Wagner: That is certainly a correct statement so far as section 7 (a) is concerned."

Up to the time of the adoption of Section 7 (a) of the National Industrial Recovery Act, the relationship between the management and the employees in an enterprise was based upon mutual understanding, was dependent upon mutual interest in the enterprise and good will, rather than upon compulsory governmental regulations. Employees always had the right to discuss the terms of their employment in respect to wages, hours and working conditions, either individually or collectively; and to join labor organizations and engage in union activities or refrain from membership in labor organizations. On the other hand, employers had theretofore always had the right to exercise their own judgment and discretion in the hiring, promotion, discharging or demotion of employees. Regulation by the states went only to workmen's compensation acts and to protection of the workingman from hazardous or dangerous work or unhealthy working conditions or excessive hours. Congress had authority to make regulations relating to employees only where such regulation involved employees directly operating in interstate railway transportation, *Wilson vs. New*, 243 U. S. 332, and then only in face of an impending strike, and this decision the court said went "to the border line" of constitutionality (see comment of court in respect to the decision of *Wilson vs. New*, in *Wolff Packing Company vs. Court of Industrial Relations*, 262 U. S. 522, 544. See *Texas & New Orleans Ry. Co. vs. Brotherhood of Ry. and Steamship Clerks*, 281 U. S. 548, 570; 74 L. Ed. 1034.

Under Section 7 (a) of the National Industrial Recovery Act, Congress attempted for the first time to compel bargaining activities between the employer and employee in *all industries* throughout the Nation. The government attempted to sustain Section 7 (a) of the National Industrial Recovery Act as a regulation of interstate commerce by Congress, on the strained theory that a refusal on the part of the employer to bargain collectively with employees under a statutory compulsory requirement, as compared with the free and voluntary bargaining between employer and employee, tended to lower wages, cause dissensions and strikes, which would result in a falling off of prices, a slowing up of production, and, therefore, burdened or affected interstate commerce or the free flow thereof, since less merchandise and goods would be sold and transported in commerce.

The Labor Disputes Act, Public Resolution No. 44 of the Seventy-third Congress, First Session, supplemented Section 7 (a) of the National Industrial Recovery Act and attempted to provide for the administration and enforcement of Section 7 (a) by a National Labor Relations Board, and it too was abandoned after the decision in the *Schechter* case. Under the Labor Disputes Act, the National Labor Relations Board attempted to apply the law to all of the industries in the country. The Board formulated the so-called "majority rule," which, although not in the Labor Disputes Act, was later enacted and made a part of the National Labor Relations Act.

The Act here before the Court was introduced to the Congress by Senator Wagner of New York in March, 1935, before the decision in the *Schechter* case on May 27th, 1935. Hearings before the Committee on Education and Labor of the United States Senate were held from March 15, 1935 to April 2, 1935 (see hearings before Committee on

Education and Labor, United States Senate, Vols. 1, 2 and 3, U. S. Government Printing Office), and the "Findings and Policy" of Section 1 of the Act were predicated thereupon.

On May 15th, 1935, Senator Wagner, in advocating the adoption of the National Labor Relations Act and in tracing its development from Section 7 (a) of the National Industrial Recovery Act, attempted to justify the Congressional authority to enact Section 7 (a), saying in Congressional Record, Vol. 79, No. 101 (p. 7849), Wednesday, May 15th, 1935 as follows:

> "The first hypothesis was that the interpenetration of **all industries* throughout the country the nonconformity of economic organization to State lines and the deep-seated and widespread character of the national calamity, made Nation-wide action essential • • •
>
> "Congress determined to fix wages and hours at a level that might, by re-employment and higher pay spread adequate purchasing power among the masses of consumers and thus prime the pump of business."

Then after discussing the weaknesses in Section 7 (a) and in the Labor Disputes Act, Senator Wagner, speaking of the Act, here before the Court, said at p. 7851:

> "The present bill cures the defects in existing law. It clarifies and *amplifies* the provisions of section 7 (a), and it centralizes in a single permanent National Labor Relations Board the duty to protect the collective-bargaining right of employees."

The bill as introduced was amended in the Senate on May 16th, 1935, and was passed and sent to the House for action

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*Italics in quotations throughout this Brief are the writer's unless otherwise indicated.

on May 17th, 1935, all prior to the decision in the *Schechter* case on May 27th, 1935. While the bill, as favorably voted upon by the Senate, was pending in the House, the Supreme Court decided the *Schechter* case. The hearings before the Committee on Labor in the House were continued, and on June 10th, 1935, two weeks after the *Schechter* decision, the Committee on Labor in the House filed its report through Mr. Connery, the sponsor of the bill in the House (House Report, No. 1147, June 10th, 1935), and after reviewing the reason for the adoption of Section 7(a) in the National Industrial Recovery Act and the weaknesses thereof, Mr. Connery said, on behalf of the Committee, in this report on page 7:

> "The time for appropriate action by the Congress is at hand, because on June 16, 1935, the National Industrial Recovery Act, and Public Resolution 44, Seventy-third Congress, expire by limitation. The Congress does not propose to withdraw the 'new charter of rights' enacted in section 7 (a). The only honest thing for the Congress to do, therefore, is to provide adequate machinery for its enforcement which is the object of the present bill."

During the consideration of the bill in the House as first approved by the Senate, some twenty-five minor amendments were proposed by the House Committee and reported to the House on June 10th, 1935, (House Report No. 1147), and all of these amendments, except four, were agreed upon by a conference committee of Senators and Representatives and reported on June 26th, 1935, (House Report No. 1371).

Section 1 of the bill as enacted is a redraft of Section 1 contained in the bill as first approved by the Senate, rephrased and amplified. The House redrafting of Section 1 was thought by the conferees "to contain a better state-

ment of the jurisdictional basis of the bill." (Conference Report, House Report No. 1371). Section 2, subsection 6, of the bill as enacted is essentially the same as first approved by the Senate, with a minor rephrasing, so that instead of the provision contained in this section in the bill as first approved by the Senate:

> "The term 'commerce' means traffic, trade or commerce, or any transportation or communication relating thereto . . ."

the provision in the bill as finally enacted reads as follows:

> "The term 'commerce' means trade, traffic commerce, transportation or communication . . . "

Likewise Section 2, subsection 7, of the bill as enacted was amended by "a minor change . . . by removing the tautological phrase" (Conference Report, House Report No. 1371.) Section 10 (a) of the bill as enacted, which provides that the Board is empowered to prevent alleged unfair labor practices "affecting commerce," is identical to the section contained in the bill as first approved by the Senate. The other amendments proposed in the House did not pertain to the jurisdiction nor the underlying basis of the bill; these amendments were minor in character and for the most part consisted of a substitution of words merely for purposes of clarification.

It may be fairly stated that the bill as finally enacted a month after the decision in the *Schechter* case was substantially the same in substance as the bill first introduced in the Senate and approved by the Senate prior to the *Schecter decision*. Two weeks after the *Schecter* decision, and after the House Committee had made the various amendments to the bill, Representative Connery likewise reported as quoted supra 26.

The jurisdictional basis, the object of the Act, the mode and method of achieving the alleged objects of the Act were all the same as those claimed by the Government in attempting to sustain the validity of Section 7 (a) of the National Industrial Recovery Act: to-wit, that by regulating employee-employer relationships in industries generally, to stabilize wages in industries throughout the nation, to maintain purchasing power, to increase or maintain price, more goods will be sold and transported in commerce between the states. By means of this tenuous tie-in to the Commerce Clause, more by way of statement and language than fact, Congress attempted to justify its authority in adopting this law.

In the Senate Report on the Act, May 1, 1935, Senate Report No. 573, Seventy-Fourth Congress, First Session, the Committee reported at page 18:

> "In effect upon commerce, wage levels are as significant as price levels, for the exchange of goods depends as much upon the consumer's income as upon the price which he must pay. • • • An analysis of the effect of a decline in mass purchasing power upon *all commercial transactions* forces the conclusion that the protection of *Nation-wide commerce* depends as much upon a floor for wages as upon a ceiling for prices. And in stabilizing wages, no factor plays a more important role than collective bargaining." (Italics supplied)

In the report of the Senate Committee, it appears that while the Act "is not intended to go beyond the constitutional power of Congress, as that power may be marked out by the courts," nevertheless, considering the report as a whole, it is directed to a compulsory collective bargaining between employer and employee, as a

means of stabilizing wages in *"all commercial transactions"* for the protection of *"Nation-wide commerce."*

In defining the rights of employees and alleged unfair labor practices, Sections 7 and 8 and other provisions of the Act may be said to be applicable to employees in industry generally and are not restricted to employees engaged in interstate operations. Although Section 10 (a) of the Act appears to limit the authority of the Board to cases of unfair labor practices "affecting commerce," nevertheless when the Act is considered as a whole it is clear that Congress intended it to apply to industry generally.

The same construction of the Act by the Board which extends the Act to include Respondent and its Production Employees will include practically all manufacturing and production business.*

It was not intended to maintain wages only in business where the employees were engaged directly in interstate commerce. To limit the operations of the Act to employees engaged directly in interstate commerce, and not to apply it to employees in industry generally, would not remove the alleged causes of lower wages and industrial unrest according to the report of the Senate Committee. The purchasing power to be maintained was that *"in all commercial transactions* • • • for the protection of *Nation-wide* commerce depends as much upon a floor for wages as upon a ceiling for prices."

The National Labor Relations Act is founded upon the same strained syllogism and theory, as Section 7 (a) of

*Just what the cases referred to in the Board Brief in the Associated Press case (p. 116) as having been dismissed for want of jurisdiction—apparently between five and ten per cent of the complaints—could have been does not appear.

the National Industrial Recovery Act, all of which is set forth in Section 1 of the Act, designated "Findings and Policy." That Congress was without power to regulate local labor relationships under the guise of regulating interstate commerce was determined by this Court in *Schechter Poultry Corp. vs. United States*, 295 U. S. 495, *Carter vs. Carter Coal Co.*, 298 U. S. 238. See "Findings and Policy" set forth in *Associated Press Brief* in Appendix immediately following page 102 of that Brief.

It is clear that the Act regulates labor relations in *industry* in general and not commerce, which may succeed it. The findings as contained in Section 1 of the Act all refer to what is there recited to be practice and experience in labor relationships in industry generally. From the report of the Senate Committee on the Act and from the findings and announced policy of the Act, it is clear that the purpose of the Act is to provide for a means of compulsory collective bargaining between employer and employee in industries generally. The causes which were alleged to have led to industrial unrest and strife were found to be causes existing in industry generally, and, therefore, to eliminate these causes the Act was adopted. It is clear that the intention of Congress in adopting the Act was to regulate employer-employee relationships in industry generally, which is beyond the power of Congress to regulate, under the guise of regulating interstate commerce.

B. Labor Relationships Generally Regulated by Act.

The Act is not directed to the regulation of interstate or foreign commerce, but is an attempt to regiment employees and workmen in industries generally into existing national labor unions and to subject industry as a whole thereto. In-

stead of diminishing industrial unrest under the pretense of promoting collective bargaining, the Act, as enacted, has increased, and will continue to increase, labor agitation, incite dissension and leave open to employees the constant threat and thought of strikes. Since the enactment of Section 7 (a) of the National Industrial Recovery Act, to date agitation for union members by national labor organizations has been greatly increased.

Under the so-called majority rule, provided for by the Act, the representative chosen by the majority of employees at the plant is designated the sole and exclusive bargaining agent of all employees at the plant in respect to wages, hours and other conditions of employment. The minority group of employees and the individual employees are restricted and limited in their right, except to report grievances. Under this rule individual employees or minority groups would be compelled to submit themselves to membership or have imposed upon them a representative which they have not chosen, who would make bargains by which they may not wish to abide. Likewise the employer's right of voluntary bargaining with individual employees or minority groups as to hours, wages and other conditions of employment is denied by the Act.

While the employer is restricted under Section 8 from interfering or coercing employees, there is no restriction in the Act against labor organizations coercing minority employees who refuse to join labor unions. Nor is there any restriction in the Act against interference or coercion of the employer by labor unions or agitators. While the Act provides for a machinery under which employees may seek an order from the Board against employers for alleged unfair labor practices, there is no provision in the Act which permits the

employer to seek relief and protection from the Board against any unfair labor practices of the employees, or by labor organizations. And even in cases where the employees seek relief before the Board, and even if the Board were to enter an order in favor of the employer and against the complainant as employee (an event which to this date has not yet come to our attention), there is no requirement under the Act which compels the employee to abide by the decision. Under the Act, the employer is bound by an adverse decision against him, whereas the employee in the event of an adverse decision may strike. Section 13 of the Act specifically provides "nothing in this Act shall be construed so as to interfere or impede or diminish the right to strike."

It is most significant that while under Section 8 of the Act, the employer is prohibited from discriminating against labor organizations, that Section 8, subdivision (3), of the Act nevertheless permits and sanctions a closed shop contract between employer and any labor organization purporting to represent the majority, and thus, in effect, force individual employees in such factories and the minority groups of employees, not wishing to join labor organizations, either to submit to membership or lose their jobs altogether. Admitting the right of employees by peaceful persuasion to attempt to convince other employees or the employers of the desirability of labor unions, the Act expressly prohibits and denies to employers the same privilege of peaceful and friendly discussion of the contrary thesis in respect to labor unions, and by expressly sanctioning the closed shop under Section 8, subdivision (3), of the Act in effect denies to individual employees or minority groups in such factories their means of employment, unless they submit themselves

to labor union membership and representation not in accordance with their choosing.

Quite contrary to the avowed purpose of the Act, "to diminish the cause of labor disputes," the Act in effect and operation has increased, and tends to increase, labor disputes because of its one-sided nature, binding employers and leaving entirely free from responsibility agitating and outside labor unions, which have stirred up disputes in industries where theretofore peaceful and harmonious employer-employee relationships existed. The Act in *its* operation will tend to stir up hostilities and antagonisms, instead of promoting peaceful and harmonious industrial relationship.

The regulation of the employer-employee relationship in respect to membership in labor unions aimed to prevent discrimination by the employer against employees for memberships in such organizations is not a regulation of interstate commerce, but has been held to be a regulation not within the authority of Congress under the Commerce Clause, even in a case where the employees involved were employees of an interstate railroad engaged in transportation. This Court so held in the case of *Adair vs. United States*, 208 U. S. 161, saying at page 178:

> "But what possible legal or logical connection is there between an employee's membership in a labor organization and the carrying on of interstate commerce? Such relation to a labor organization cannot have *in itself* and in the eye of the law, any bearing upon the commerce with which the employee is connected by his labor and services."

And at page 179:

> ". . . . We hold that there is no such connection between interstate commerce and member-

> ship in a labor organization as to authorize Congress to make it a crime against the United States for an agent of an interstate carrier to discharge an employee because of such membership on his part. If such a power exists in Congress it is difficult to perceive why it might not, by absolute regulation, require interstate carriers, under penalties, to employ in the conduct of its interstate business *only* members of labor organizations, or *only* those who are *not* members of such organizations—a power which could not be recognized as existing under the Constitution of the United States."

To like effect is the holding in the case of *Railroad Retirement Board vs. Alton Railroad Co.*, 295 U. S. 330, 374, in which a regulation providing for a pension plan for employees of an interstate railroad was held—

> ". . . . in no proper sense a regulation of the activity of interstate transportation. It is an attempt for social ends to impose by sheer fiat noncontractural incidents upon the relation of employer and employee, not as a rule or regulation of commerce and transportation between the States, but as a means of assuring a particular class of employees against old age dependency."

The case of *Adair vs. United States*, supra, still prevails and has not been overruled or modified by the case of *Texas & New Orleans Railroad Co. vs. Brotherhood of Railway & Steamship Clerks* supra, either on the commerce point or on the due process point. It is fully discussed infra 95, 100, in connection with the latter point.

The cases of

Schechter Poultry Corp. vs. U. S., 295 U. S. 495, and
Carter vs. Carter Coal Co., 298 U. S. 238

are the subject of eight pages of discussion in the Board's Brief in the Jones & Laughlin case beginning at page (86). An effort is there made to show that the decisions in those cases are not contrary to the contentions here made on behalf of the Board.

In the Schechter case "two counts charged violation of the • • • wage and • • • hour provisions of the code" (p. 527). These provisions are the subject of Section "Third" of the Opinion (p. 542) and likewise are dealt with in the concurring opinion (p. 554). Counsel for the Government in that case contended (p. 514)—

> "An additional basis on which the wage and hour provisions rest is that they are reasonable means for the prevention of labor disputes arising out of those subjects, and so are adapted to protecting interstate commerce from the burdens caused by labor disturbances."

The Guffey Act in Section (1) declares—

> "The right of mine workers to organize and *collectively bargain* for wages, hours of labor, and conditions of employment should be guaranteed • • • in order to avoid those obstructions to its interstate commerce that recur in the industrial disputes over labor relations at the mines."

The National Labor Relations Act in Section (1) declares—

> "Experience has proved that protection by law of the right of employees to organize and *bargain collectively* safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of *industrial disputes* arising out of the differences as to wages, hours, or other working conditions • • •."

In the Carter case Government counsel contended—

> "The collective bargaining provisions • • • also constitute a means peculiarly adapted to preventing the disturbance and injury to interstate commerce caused by the numerous and wide-spread strikes which have frequently recurred in the bituminous coal industry" (Brief, p. 239).
>
> "Obviously, the statutory guaranty of freedom of collective bargaining could stand alone and work towards the accomplishment of its intended objective entirely apart from the existence or operation of the wages and hours provision of the statute" (Brief, p. 281).

In the Board's Brief in the Jones & Laughlin case it is said (p. 92)—

> "Wage regulation might well be thought not reasonably calculated to eliminate the causes of industrial strife, and hence not to bear a reasonable relation to the protection of commerce, • • •
>
> "On the other hand protection • • • of collective bargaining has been proved by experience to be calculated to eliminate one of the most serious causes of industrial strife • • • traceable to the opposition to the • • • right of employees to • • • bargain collectively • • •"

Collective bargaining is put forward solely as a means to settle and fix wages and hours and conditions of employment. No difference can possibly exist in their relation to commerce, of statutory regulations providing for the fixing of hours and wages and such regulations providing for collective bargaining for fixing of hours and wages.

The Court in the *Carter* case said

> "The employment of men, the fixing of their wages, hours of labor and working conditions, the

bargaining in respect of these things — *whether carried on separately or collectively*—each and all constitute intercourse for the purposes of production, not of trade" (p. 303).

"A consideration of the foregoing, • • • renders inescapable the conclusion that the effect of the labor provisions of the act, including those in respect of minimum wages, wage agreements, *collective bargaining*, and the Labor Board and its powers, primarily falls upon production and not upon commerce" (p. 304).

The legislative power cannot by its own recitals, findings and pronouncements of policy invest itself with authority not otherwise possessed. This Court has as often as occasion has arisen looked through the same to the real substance of what was undertaken to be done.

Schechter Poultry Corp. v. United States, 295 U. S. 495;
Bailey v. Drexel Furniture Co., 259 U. S. 20;
United States v. Butler, 297 U. S. 1;
Reickert Rice Mills v. Fontenot, 297 U. S. 110;
Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 526;
Prentis v. Atlantic Coast Line, 211 U. S. 210;
Chastleton v. Sinclair, 264 U. S. 543, 548.

As the primary object of the Act is in excess of the power of Congress to achieve, the Act cannot be sustained by limiting its application to employees engaged directly in interstate commerce which would not achieve its primary object or purpose.

Williams v. Standard Oil Co., 278 U. S. 235;
Trade Mark Cases, 100 U. S. 82, 98;
The Employer Liability Cases, 207 U. S. 463, 500.

The Act, as a Whole, Is Invalid.

The conclusion is inescapable that the purpose and object of the National Labor Relations Act, construed as a whole, is (1) to regulate labor employer-employee relationships in industries in general throughout the country, and (2) to regiment employees into national labor organizations. The purpose of the Act is not to regulate interstate commerce.

The relationship of employer and employee is one which is created voluntarily by the parties. Whether the interests of employers and employees in their industrial relationship, voluntarily created, can best be furthered and developed on the basis of mutual interest and confidence in the enterprise in which both are engaged, upon mutual understanding and good will and adjusted through normal economic processes, or whether the relationship between employers and employees should be subjected to compulsory regulation, antagonistic in spirit, and adjusted by the artificial processes of controlled economy and political machinery, is not open here to us for discussion. If legislative means are deemed to be socially, politically or economically desirable, they must be employed within proper constitutional bounds. As was said by the Court, in the case of *Schechter Poultry Corp. vs. United States*, 295 U. S. 495 at p. 549:

> "If the federal government may determine the wages and hours of employees in the internal commerce of a State, because of their relation to cost and prices and their indirect effect upon interstate commerce, it would seem that a similar control might be exerted over other elements of cost, also affecting prices, such as the number of employees, rents, advertising, methods of doing business, etc.

All the processes of production and distribution that enter into cost could likewise be controlled. • • •

"It is not the province of the Court to consider the economic advantages or disadvantages of such a centralized system. It is sufficient to say that the Federal Constitution does not provide for it . . ."

POINT II.

In Its Manufacturing Operations Respondent and Its Production Employees Are Not

(A) in Commerce,

(B) in the "Stream," "Current," or "Flow" of Commerce, and

(C) do not "Affect Commerce"

and hence are not subject to Federal control.

Insofar as such operations of Respondent and the relations of Respondent with such employees are attempted to be regulated by

the National Labor Relations Act said Act exceeds the power of Congress and contravenes the Tenth Amendment,

the Orders of the National Labor Relations Board here before the Court said orders exceed any power which Congress did or could confer upon said Board and contravene the Tenth Amendment.

This obviously is a point upon which each case must stand upon its own facts. In discussing the facts reference cannot well be had to or adoption made of discussion of the facts in the Briefs in any other case. The Board Brief, page 18, in effect concedes that if this Court shall determine that under the facts and law the operations and employee relations now before the Court in the Associated Press and the Jones & Laughlin cases or either of such cases are not within the competence of the National Labor Relations Act or Board to regulate then beyond any question the operations and employee relations of Respondent here are not within such competence. And under such determination in either of those cases it would not be necessary to consider the detailed facts herein.

In discussing the facts in relation to this point it will be taken as a premise—which it is believed is undoubted—that, inasmuch as the question whether the Respondent's operations or its relations with the discharged employees is in interstate commerce or in such relation to commerce as to be subject to regulation by Congress and the Board (at least in the particulars here sought) goes to the jurisdiction of the Board to act at all, this Court will make its determination upon the facts as well as the law upon its own independent judgment.

That if the words of the Act purporting to otherwise limit the nature and scope of the determination of the facts by the Court is to be taken literally the Act is for that reason violative of the Fifth Amendment is discussed infra 88.

Even if there be any point of fact which does not go to the very jurisdiction of the Board to act at all as possibly for example the cause or reason for the discharge of any employees who are the subject of the complaint, the findings of the Board thereon are nevertheless so arbitrary and capricious and without substantial basis in the facts (as will appear in the discussion thereof shortly following) that this Court must disregard such findings under the rule enunciated and applied in

Tagg Brothers & Moorhead v. U. S. 280 U. S. 420, 443;
San Diego Land & Town Co. v. Jasper, 189 U. S. 439, 442;
U. S. v. Abilene & Southern Ry., 265 U. S. 274, 286-290;
Interstate Commerce Comm. v. Diffenbaugh, 222 U. S. 42, 46-47;
Florida East Coast Ry. v. U. S., 234 U. S. 167, 187.

The Manufacturing and Production of Respondent and the Relation of the Seven Employees Involved in These Proceedings in Respect Thereto.

Respondent is primarily engaged in the business of manufacturing trailers, semi-trailers, carryalls and parts and accessories therefor. Its business is essentially that of converting and fashioning raw, unfinished and other materials through an involved manufacturing process into a completed and different form, and assembling them into the finished trailer product (R. 70).

Respondent has only one factory, which is located in Detroit, Michigan, and all of its manufacturing and assembly operations are exclusively carried on at that plant (R. 71), with the exception of certain assembly operations carried on by a wholly owned subsidiary, a Canadian corporation at Toronto, Canada (R. 90).* The factory at Detroit covers about nine acres, and at the time of the hearing seven hundred men were employed in the manufacture and production of trailers at Detroit (R. 71). For a photograph of the exterior of the Detroit plant see Exhibit 1-A (R. 71).

The seven men involved in these proceedings were men who were formerly employed in the production and manufacturing work (R. 71).

Trailers are non-automotive vehicles which are attached to and pulled by trucks or truck-tractors. The trailer business grew and developed with the growth and development of the automobile business. At first the trailer was a clumsy, slow-moving wooden affair, much

*Since the hearing subsidiaries of the Company have engaged in assembly operations in California and Kansas City.

like a wagon, from which it was developed to its present steel-framed, power-braked, scientifically engineered trailer, with variations of size, frame, carrying-load and bodies to meet the requirements of the goods being carried. The development and growth of the trailer business is described on page 6 of the Exhibit next below mentioned. Respondent, to meet the varying requirements of different types of business, has forty standard models of trailers, semi-trailers, four-wheel trailers and carryalls, with load capacities ranging from two tons to fifty tons of varying designs and with bodies suitable to the particular business for which they are required, see p. 12 "Engineered Transportation" (physical) Exhibit 12. Certain standard trailers built by Respondent are designed for hauling by one and one-half ton trucks, see (physical) Exhibit 5. Certain standard trailers are designed for hauling live-stock, see (physical) Exhibit 4, while other standard types of trailers are designed for different types of business, see photographs starting at page 20 of (physical) Exhibit 2.

Materials Used In Manufacturing Operations Are Purchased Prior Thereto.

Prior to and preceding the manufacturing operations at the factory, various raw, unfinished, partially finished and wholly finished materials necessary in the manufacture and construction of the trailers are delivered to the factory at Detroit (R. 72). To convert and change the raw or rough unfinished materials to their final manufactured form, "there are probably several hundred different machine operations required on different materials necessary in the manufacture of a trailer. There are over two hundred different parts requiring variation of these manufacturing operations for each trailer" (R. 76).

Axles are purchased of different standard sizes, and are received at the plant as rough, unfinished forgings. Before being used in the trailer, they are put through a number of different manufacturing and machine operations, such as turning operations on a lathe, grinding operations and drilling operations, each being done on separate machines and requiring separate handling (R. 72). Brake parts used on large trailers are almost completely manufactured at the plant from rough castings and forgings purchased according to standard specifications (R. 73, 116). Although the side-rails and some cross-members of the frame of a trailer are purchased from factories having large presses, Respondent manufactures some cross-members from sheet steel, which are purchased in rough form and require a number of manufacturing operations until ready to be molded into a part of a trailer (R. 72). In addition to these materials, Respondent purchases "a very considerable amount of malleable castings and steel castings, all in rough form, which require a number of machine, finishing and drilling operations" at the plant at Detroit before they are ready to be used in the assembly (R. 73). Rims, wheels, roller bearings, tires and springs are purchased according to standard specifications in completely finished form and are used in the assembly of the trailer (R. 73).

The bodies are almost completely manufactured from raw, rough and unfinished materials at the plant in Detroit (R. 73). The chief materials used in the construction of trailer bodies at the plant are lumber and sheet steel. Most of the lumber used is oak, ash, hickory and yellow pine. The hardwoods come in rough form, and all of the dressing is done at the plant at Detroit. The yellow pine is used exclusively for flooring. This has been tongued and grooved upon delivery. The yellow pine has

to be cut to length and holes drilled for fastening to the floor, in addition to other finishing operations, at the plant (R. 73).

Large quantities of sheet steel are used in the manufacture of bodies. The sheets of steel come in standard sizes and are cut and formed at the plant according to requirements. In the building of the trailer body, which is fastened to and built upon the chassis, a very considerable amount of labor and manufacturing and construction work are required. In building bodies, the materials for the most part are taken in an almost unfinished form and fashioned in the operations at the plant at Detroit (R. 74).

The various materials required by Respondent in the manufacture and assembly of trailers are bought through the purchasing department at the plant at Deeroit (R. 72). Some of the materials are shipped into the factory from out of the state, and some from within the state, although most of the suppliers of materials have Detroit offices and make the contact with Respondent for the sale of these materials at the plant at Detroit (R. 72). In 1934 approximately fifty per cent of the various materials required in the manufacturing operations were shipped to the plant from outside of the State of Michigan (R. 72). Materials which have their source outside of Detroit are shipped to Respondent f.o.b. Detroit, or with freight allowed to Detroit. For the most part, the risk of the transit is upon the shipper, and title vests in Respondent upon delivery to its plant at Detroit, although there may be some instances where this is not the case (R. 74). Some of the materials are shipped in by rail; some of the materials are delivered by truck and trailer, and a small amount of the materials is shipped in by boat (R. 74). Materials are pur-

chased in anticipation of orders being obtained in the course of business. Generally when materials are purchased, Respondent does not know into what particular trailer they may become a part (R. 74, 75, 80).

When the materials are delivered to the plant at Detroit, they are kept in a material inventory and commingled with other materials of like character at the plant. A smaller supply of completely finished materials is kept on hand than materials which require extensive manufacturing operations. Like all well conducted factories, the planning department at the factory attempts not to have an inventory of raw materials kept on hand prior to the manufacturing operations for a longer period than is necessary. Nevertheless experience at the plant shows that various materials purchased remain in this material inventory for a period of a month and sometimes for a period of two, three or four months before they are manufactured and become a part of the assembled, finished trailer (R. 74, 142, 143).

There is no testimony in the Record to support the Finding contained in paragraph 17 (R. 49), that "so closely are purchase, work and shipment synchronized that on occasion, work or shipment is delayed until required parts arrive to complete the assembly. Every day articles of commerce come into the Detroit plant from outside of the State of Michigan, and every day things produced or forwarded by the Respondent (Fruehauf Trailer Company) move out to various parts of the country." The testimony on this point appears at p. 150 of the Record:

> "Q. Is it not true in your case—*not usually*, perhaps, but is it not true that *some times* in your case you take materials that come in from a vendor, and put them promptly into processing?

"A. Yes.

"Q. In order to continue an assembly or to complete an assembly that might have been started?

"A. That happens.

"Q. That happens?

"A. But in *rare cases.*"

And at pages 134-135 of the Record:

"Q. (By Mr. Patterson) Mr. Vosler, is it not a fact that very often a trailer job is held up for a few days until you get the particular brake that the customer wants on it, or the particular wheel, or the particular rim that the customer wants on it?

"A. It *would not happen very often,* Mr. Patterson.

"Q. Well, it does happen though, does it not?

"A. Well, I do not recall of its having happened.

• • • • • •

"A. Well, it would be a *very unusual* thing, to have that happen, because we carry a complete line of Midland brakes, and Bendix brakes, and Westinghouse brakes, and we carry hydraulic brakes in various sizes, and we have a very complete stock of brake parts; and it would be *very seldom.* However, occasionally that arises, where a trailer would be ordered with some very huge tires, or something of that sort, where we would have to wait for them.

"Q. Yes.

"A. But it would be *very unusual.*"

On assessment day all materials on hand are assessed by the City of Detroit, County of Wayne and State of Michigan, and the Company is subjected to, and pays, a personal property tax on this material inventory located and having a situs in the City of Detroit (R. 75).

Only a few men are required to look after the purchases (R. 75). The seven men involved in these proceedings were not employed in the purchasing department of Respondent, and were not in any wise connected therewith (R. 75).

Manufacturing Operations

The manufacturing operations of Respondent consist of (a) fabrication of the various raw materials and rough and partially finished materials; and (b) the assembly of the frame, axles and wheels into the finished trailer chassis; and (c) the building of bodies from lumber and sheet steel upon the finished trailer chassis and painting to complete the finished trailer.

In the manufacturing division, the Company has an engineering department of between twenty-five and thirty-five men, who design and engineer layouts of trailers (R. 75). Then there is the planning department, which is a clerical division of the production division of the business, which supervises the material inventory from the time the materials are received at the plant until they are turned over to the shipping department in the form of finished trailers. This department employs between twenty and thirty men (R. 75). In the tool room ten to twelve men are employed, who manufacture and make fixtures and dies necessary for the various manufacturing operations. This department is also responsible for the repair and maintenance of machinery and equipment (R. 75).

In the machine shop fabricating and machining of all kinds is performed in changing raw, rough and unfinished materials and forgings to a highly manufactured finished state. These operations include sawing, drilling,

tapping, turning, milling, grinding, rough grinding, finished grinding, broaching, pressing, machine riveting, hand finishing and bench assembly, and inspection operations. In this department most of the metal working machinery is operated, including vertical drills, radial drills, single spindle and multiple spindle drills, milling machines, various kinds of lathes, bullards, heavy and medium duty screw machines and a number of other machines of various kinds. In this department all of the rough castings enter for machine work (R. 76). There are several hundred different machine operations required on these rough and unfinished materials and forgings on over two hundred different parts, each of which requires a variation of these manufacturing operations before they may be used in a trailer. These parts for the most part are used on the axle and chassis and are assembled to the chassis and frame of the trailer. About one hundred twenty-five men are employed in this machine shop (R. 76). Photographs showing some of these operations at the plant appear at page 76 of the Record (Exhibits 1-b, 1-c-1, 1-c-2, 1-c-3, 1-c-4, 1-d-1, 1-d-2, 1-d-3, 1-d-4 and 1-d-5).

In the frame shop or steel plant, the main frame of the trailer is built and assembled. Various parts necessary in the building and assembling of the frame are delivered here from other departments. The frame is laid out by layout men to indicate where various holes are to be punched and drilled. The frames are laid out for length and width, and it is here that the frame and the various cross-members thereof are riveted and welded. In this department men operating punch presses, drill presses, metal saw operators and one crane operator are employed (R. 76, 77). Some of the castings completed and finished in the machine shop are then attached to the frame through a riveting process. The men working in this de-

partment must have a knowledge of steel work. Riveters, working in gangs of four and five, rivet the various parts to the steel frame to be used in the chassis of the trailer (R. 76, 77). A photograph showing some of the operations in the frame department appears on page 77 of the Record (Exhibit 1-e). In this department three of the seven men involved in these proceedings, Chaloux, Coonrod and Milne, were employed (R. 76). Chaloux was a rivet puncher and sticker (R. 12, 353, 354); Coonrod was a fitter and prepared the steel parts and frames for riveting (R. 11, 453); and Milne was a layout man in the frame department (R. 12, 374).

The next department is the assembly department. Here all of the parts of the chassis of the trailer, including springs, axles, U-bolts, roller bearings, wheels, rims, tires and brake mechanism, are attached and assembled. Most of the various parts used in the assembly are those machined and finished in the machine shop; other parts, such as wheels, springs and tires, were originally purchased in finished form. All of the parts are laid out in the stock room and delivered by the stock room to this department for assembly (R. 77). Most of the brake equipment, which is made out of rough forgings and castings and finished in the machine shop, together with some other brake equipment which is purchased, is here assembled and affixed to the trailer and operated as power brakes (R. 78).

A coupler is attached to the front end of the trailer chassis and this coupler fits on to the fifth wheel which lays horizontally on the truck to connect the trailer with the truck tractor which hauls the trailer (R. 78, 86). (For a particular description of the fifth wheel, see, infra p. 68. On the front end of two-wheel trailers there is also an understructure, which supports the trailer after the truck

has been detached for unloading. In this department the chassis is completed and delivered over for painting. Peterson, one of the seven men involved in these proceedings, was employed in a certain phase of this assembly department work (R. 18, 78, 459), and also in the change-over department, which was a division of the assembly (R. 463). A photograph showing the work in the assembly department of the plant appears at page 78 of the Record (Exhibit 1-f). After the trailer chassis is assembled, it is painted in the paint department by sprays, following a standard routine, although sometimes special colors are used to meet the customers requirements. About twenty painters are employed in this department (R. 78).

The next division of the manufacturing operation is the body building division. First there is a blacksmith shop, employing about twenty men, who handle bending and forming operations, requiring the heating and treating of metal in blacksmiths' forges (R. 78). There are several wood-working machines for sawing, pressing and otherwise preparing lumber for use in bodies. There are also a number of metal working machines, including presses and brakes, and here sheet metal is formed into various shapes necessary for assembling into the body, and for otherwise preparing the steel for the body (R. 78, 79). These woodworking machines and steel machines and presses are photographed and appear opposite page 79 of the Record (Exhibits 1-g-2, 1-h-2 and 1-h-3).

The greatest number of men working in the body department are known as body builders. They fit the various wood and steel frame work and structure to the chassis and build in and rivet the steel bodies to the frame work. The lumber and steel has all been shaped and prepared for assembly in previous operations at the

plant, with the exception of drilling holes and minor operations, which is done by the assemblers. They fit the various parts together and complete the body (R. 79). Between two hundred and fifty to three hundred men are employed in the body building division (R. 78). Photographs showing the various types of work in this department are set forth in the Record opposite page 79 (Exhibits, 1-g-1, 1-g-2, 1-h-1, 1-h-2, 1-h-3, 1-I and 1-J). In this department the remaining three out of the seven men involved in these proceedings were employed (R. 78, 79). Trusch was a carpenter and body builder (R. 10, 78, 306, 310). Weinmann was a carpenter and body builder and also set up body frames and attached side-rails thereto (R. 13, 78, 319 and 320). Beck was a carpenter and body builder (R. 13, 78, 330-334).

In the decision of the Board, Findings of Fact No. 30 (R. 52), there is erroneously incorporated a statement that Beck had been employed in the shipping department. This error was admitted by the Board in its Brief in the Circuit Court of Appeals. The reference to the shipping department undoubtedly related back to a previous employment of Beck by Respondent some fifteen years theretofore, some time in 1919 (R. 324, 325). Beck was reemployed in 1934 and his foreman was Rosenbusch, the foreman in charge of the body building division at the plant (R. 325). When asked by Counsel for the Board as to what work he did at the time he was discharged Beck replied (R. 330):

"A. Body builder."

He again referred to accidents that happened while building bodies (R. 331, 332, 333). From the complaint and from the proof, it is clear that Beck, during the term

of his second employment from 1934 to the time of his discharge, had been employed in the body building operations at the Fruehauf plant.

In this dapartment are the millwright and maintenance employees who are responsible for the maintenance of the machinery, electric motors and electric wiring at the plant. There are about twelve men employed in this work (R. 80). The inspection department inspects and checks over the trailers after they have been fully manufactured, assembled and painted (R. 80). The other employees at the plant, being only a comparatively few in number, work in the stock room and as factory time clerks, boiler-room operators and similar types of plant work (R. 80).

At the time of the hearing seven hundred men were employed in the manufacturing and production operations of Respondent at the plant in Detroit. Prior to their discharge the seven employees involved in these proceedings were employed in the operations just mentioned. The work of these employees starts at the factory and finishes at the factory (R. 80). These men have nothing to do with the purchase of material nor with the sales or shipment of the finished manufactured product. They have nothing to do with the material until after it has been placed in the material inventory and later taken therefrom for the manufacturing operations. Their work is to fabricate and change the raw and unfinished materials from a rough state through manufacturing processes and to assemble the various parts into a completed trailer product different in form and character from the raw materials which originally were brought into the plant prior to the manufacturing operations (R. 80).

Sales and Distribution

The trailers manufactured by Respondent are marketed and sold under the supervision of the Sales Department directed by Gerald Chamberlain, Vice-President in Charge of Sales, whose office is at the plant in the City of Detroit (R. 80).

At the time of the hearing Respondent had thirty-one branch sales offices in the States of New York, New Jersey, Massachusetts, Connecticut, Pennsylvania, Indiana, Georgia, Louisiana, Kansas, Missouri, Nebraska, South Dakota and Michigan (R. 80, 81). These branch offices are operated by employees of the Company in small garage buildings with sufficient space to display from three to five trailers except in the larger cities where between twenty to thirty trailers are displayed (R. 81). Except for trailers sold from the stock of these branch offices for cash, all orders taken at these branch offices are subject to approval of officials of the Company at Detroit (R. 81).

The Company also distributes trailers manufactured by it through sales made directly to distributors or dealers. The distributors or dealers are the purchasers and pay or are obligated to pay the purchase price to the Company. Distributors and dealers are given a certain discount off of the list price. They in turn sell the trailers to the ultimate consumer at their own risk. Sales by Respondent to distributors or dealers are for cash or are on installment payments under conditional sales contracts or chattel mortgages. The credit of the distributor or dealer, and, where sales are made through branch offices of the Company, the credit of the customer, are subject to the approval of the Credit Department at Detroit (R. 81). For the most part dealers or distributors handle their own

customers' paper, although in a small percentage of cases Respondent assists in financing such sales upon endorsement of the distributor or dealer (R. 81). The conditional sales contract notes and mortgages payable to Respondent are generally negotiated and handled by the Fruehauf Trailer Sales Company, a wholly owned subsidiary, and are not financed by any other financing institution (R. 129).

"In some instances" Respondent consigns trailers to distributors and dealers, retaining the title and right to recall possession of the trailers at all times. Contrary to the Finding of the Board, No. 8 (R. 47), which leaves the impression that the consignment of trailers covers a large part of the distribution, the testimony is clear that trailers are only consigned in a small minority of cases, that is "in some instances" and only for credit reasons (R. 125).

Sales made by Respondent in 1934 amounted to $3,818,000.00 and during that year the nearest competitor of the Company only sold thirty-seven per cent of that amount (R. 11, 123). For statistics showing the development of sales and the position of the nearest competitior in respect thereto, see Board Exhibit 7, a Fruehauf advertisement "It Pays to Serve" (R. 111).

Many customers pick up trailers purchased by them with their own trucks at the factory at Detroit (R. 81). At the time of the hearing shipments to distributors, dealers or customers outside of Detroit and out of the State were generally made by independent carriers, f.o.b. Detroit, with the risk upon the purchaser upon delivery to the carrier at Detroit, the cost of freight to be borne by the customer (R. 81, 129). Similarly shipments were made to the sales branches of the Company. Shipments having

destinations of around four hundred miles from Detroit or less were generally made by truck and trailer, by an independent contractor operating under a state utilities or carriers permit (R. 81, 129, 166). "Some times for convenience in shipping the wheels and tires are removed" (R. 81). This is known as a "knocked down" shipment. Contrary to the Finding of the Board, No. 12 (R. 48), most of the shipments were not "knocked down" shipments. The tires and wheels were only removed for shipment "sometimes for convenience" (R. 81). And contrary to the impression left by the Finding of the Board, No. 12, "knocked down" shipments, so-called, did not involve shipment of trailers in "disassembled condition" (R. 48), but merely involved the removal of wheels and tires (R. 81, 161). The trailers are completed and road tested at the factory before delivered over to the sales department for sale and delivery by the sales department to the customer or to the carrier for shipment (R. 81, 161).

At the branch sales offices Respondent maintains a small stock of parts for repairs and service (R. 86), and has local mechanics who do repair and service work. These mechanics also attach the fifth wheel (i.e., the coupling device between the trailer and the truck which draws it) when the purchaser of a trailer so desires. These activities are stated in detail and discussed infra 68.

Respondent in advertisements and by pamphlets uses the slogan "Engineered Transportation." The Board, at the hearing, attempted to translate "Engineered Transportation" into the idea that every trailer was a specially constructed job. The number of so-called special jobs made according to specifications of customers on contracts, constitutes only a small percentage of the trailers manufactured by Respondent (R. 101). These special

jobs present no particular problem other than to call for a variation of the length or width of frame, variation of design of body, special paint or color, or type of brake equipment. Parts used in making up a special job are mostly standard parts taken from stock (R. 134), and all of the manufacturing and assembling of these so-called special jobs is done entirely at the factory at Detroit (R. 134, 485). By "Engineered Transportation," the sales department of Respondent stresses the importance of having a sales representative in the field, experienced in hauling problems, analyze the requirements of the customer so as to recommend the proper type of trailer equipment which should be purchased by the customer to meet the requirements of the customer as to load, length of trailer, length of truck tractor, combination of tractor and trailers, types of tires, power-brake, road conditions, speed and costs (R. 106, 134) (see Physical Exhibit 12, "Engineered Transportation," page 27). "As a general thing, the trailer is available out of our standard lines" (R. 106).

About eighty per cent of the sales in 1934 were to customers outside of the State of Michigan. Sales were either made through the branch offices or to distributors and dealers outside of the state (R. 153). But when the raw materials which are used in the manufacture of a trailer are bought and are delivered to the factory Respondent does not know whether that particular trailer will be sold in Michigan or out of Michigan nor does it know of what particular trailer these materials may become a part (R. 74, 80).

The seven men involved in these proceedings were in no wise connected with the sales division of the Respondent.

"To find immediacy or directness here is to find it almost everywhere" was well observed by Justice Card-

ozo in his concurring opinion in the Schechter case. It is equally applicable here. And in the opinion of the Court in the Schechter case it is well pointed out by quoting from the opinion in the Minnesota Rate Case—

> "The development of local resources and the extension of local facilities may have a very important effect upon communities less favored and to an appreciable degree alter the course of trade. The freedom of local trade may stimulate interstate commerce, while restrictive measures within the police power of the State enacted exclusively with respect to internal business, as distinguished from interstate traffic, may in their reflex or indirect influence diminish the latter and reduce the volume of articles transported into or out of the State."

It is thus a function of the State to determine (within the proper bounds of governmental action) how its local resources shall be developed and its local facilities extended and the extent (within the proper bounds of governmental action) of the freedom or restriction which shall obtain with respect to internal business of that State.

This case concerns the automotive manufacturing industry. An industry that is to a greatly preponderant major extent an industry of the State of Michigan. Were all other automotive manufacturing to cease throughout the United States the plants of Michigan would supply the nation and the world.

The history and activities of the Fruehauf Company as set forth supra 8, are not peculiar but typical of the industry and can be said in a larger and still more impressive way of many other companies in the industry. The statement in the Board Brief (23-31) in the

Jones & Laughlin case of experiences, reports, investigation and statistics of industrial activities of all kinds and in all places and under all manner of conditions has very little point. If such statement were limited to a statement of the same matters in relation to the automotive industry the statement would not be worth the space required to make it. The Chevrolet strike at Toledo referred to in the Board Brief (p. 23) in the Jones & Laughlin case occurred in 1935 after N. R. A. The automotive manufacturing industry has developed in Michigan over the course of the present century under the conditions of freedom and of restriction that the State of Michigan has seen fit to permit or to impose. The people of Michigan are of the belief that the industry has so developed and has its strength as evidenced by its recuperation from the recent depression leading all other industries and business, because of the policy which the people of Michigan have constantly observed toward the operations of that industry. It has been thought to be and is the outstanding example of good, equitable and harmonious employer-employee relations. With that industry so developed and so now being conducted under the freedom permitted by the State of Michigan, Congress should not have power to interfere and under the Constitution of the United States does not have such power. Congress may permit freedom or impose restrictions (within the proper bounds of governmental action) upon interstate commerce but with respect to the internal business of the State of Michigan in the automotive manufacturing industry Congress is without jurisdiction.

Application of Law to Facts

That manufacturing is essentially local in character should be obvious and clear from its very nature and method. It has long since been so held.

Kidd vs. Pearson, 128 U. S. 1;
U. S. vs. Knight Co., 156 U. S. 1.

These cases are sufficiently discussed in the Briefs in the other cases. For convenience in the discussion herein following the most pertinent language in each respectively is here quoted—

> "Manufacture is transformation—the fashioning of raw materials into a change of form for use. The functions of commerce are different. The buying and selling and the transportation incidental thereto constitute commerce."
>
> "Commerce succeeds to manufacture and is not a part of it."

A. Not in Commerce in the Manufacturing Operations.

The fact that materials are shipped from without the State to the plant at Detroit prior to the manufacturing operation does not make the manufacturing operation one of interstate commerce. That fifty per cent are so shipped is not a determining factor. The interstate shipment of materials into the plant comes to an end upon the delivery of the materials at the plant. The materials are then at a complete stop and rest. The materials are commingled with other materials in the material inventory and remain there from one to five months. They are there subjected to local personal property taxation (R. 75). Thereafter the materials are brought out for fabrication in the manu-

facturing operation. The materials are completely transformed in character after several hundred manufacturing operations and are assembled and made a part of a finished manufactured product. The seven employees involved in these proceedings had nothing to do with the purchase of materials or the delivery thereof to the plant, nor anything to do therewith until brought out for fabrication. The manufacturing operations succeed the commerce to the plant and precede the commerce from the plant and are not a part of such commerce. Generally when the materials are purchased and delivered to the plant Respondent does not know into what particular trailer the material may be fabricated and assembled or whether such trailer will be sold within or without the State of Michigan (R. 74, 75, 80).

Intent To Later Ship In Interstate Commerce the Manufactured Product Does Not Render Manufacturing Operations a Part of Commerce.

In the case at bar it was shown from sales experience that approximately eighty per cent of the trailers manufactured by the Respondent eventually were sold or shipped out of the State. This, however, did not make the manufacturing operation, otherwise local in character, one of interstate commerce.

In *Arkadelphia Milling Company vs. St. Louis Southwestern Railway Company*, 249 U. S. 134, an injunction was sought against the enforcement of intrastate railway rates on the ground that the shipper was engaged in interstate commerce in transporting logs from the woods to its mills in the same state where the rough logs were dried, processed and manufactured into staves, headings and hoops which were sold and shipped out of the state. The

manufacturing and drying process required several months and on the average of five months elapsed from the date the rough lumber was received at the mill to the time when it was converted into a finished product and shipped out of the state. The materials on hand at the mill prior to and pending the manufacturing operation were subjected to a general property tax imposed by the State. This Court said at page 151:

> "It is not merely that there was no continuous movement from the forest to the points without the State, but that when the rough material left the woods it was not intended that it should be transported out of the State, or elsewhere beyond the mill, until it had been subjected to a manufacturing process that materially changed its character, utility, and value. The raw material came to rest at the mill, and after the product was manufactured it remained stored there for an indefinite period—manufacture and storage occupying five months on the average—for the purpose of finding a market. Where it would eventually be sold no one knew. And the fact that previous experience indicated that 95 per cent of it must be marketed outside of the State, so that this entered into the purpose of the parties when shipping the rough material to the mill, did not alter the character of the latter movement. The question is too well settled by previous decisions to require discussion."

In *Oliver Iron Co. vs. Lord*, 262 U. S. 172, the occupation tax imposed by the State of Minnesota upon persons engaged in the business of mining or producing iron ore was held not to contravene the commerce clause. The Mining Company showed that *practically all of its output was mined to fill existing orders and contracts for immediate shipment to consumers outside of the State.* The admitted facts of the case are (page 178):

> "Three-fourths of it is from open pit mines and one-fourth from underground mines. At the open pit mines empty cars are run from adjacent railroad yards into the mines and there loaded. Steam shovels sever the ore from its natural bed and lift it directly into the cars. When loaded the cars are promptly returned to the railroad yards, where they are put into trains which start the ore on its interstate journey. The several steps follow in such succession that there is practical continuity of movement from the time the ore is severed from its natural bed. The operations within the mine and the movement of the cars into and out of the mine are conducted by the plaintiffs. The subsequent transportation is by public carriers. At the underground mines the plaintiffs dig the ore, bring it to the surface through shafts and put it in elevated pockets where it readily can be loaded into cars. The subsequent movements are much the same as at the open pit mines, but their continuity is not so pronounced."

All but a small fractional part of the ore mined was shipped out in the same condition as when it was scooped out of the mine; the remaining ten to twenty per cent was merely concentrated by washing after coming out of the mine and before starting out of the State but the Court stated that the other "usual operations renders this deflection immaterial."

This Court said (178):

> "Mining is not interstate commerce, but, like manufacturing, is a local business subject to local regulation and taxation. (Citing cases). Its character in this regard is intrinsic, is not affected by the intended use or disposal of the product, is not controlled by contractual engagements, and persists even though the business be conducted in close connection with interstate commerce. (Citing cases).

> "The ore does not enter interstate commerce until after the mining is done, and the tax is imposed only in respect of the mining. No discrimination against interstate commerce is involved. The tax may indirectly and incidentally affect such commerce, just as any taxation of railroad and telegraph lines does, but this is not a forbidden burden or interference."

Utah Power & Light Co. vs. Pfost, 286 U. S. 165 concerned the validity of an Idaho license tax on the manufacture, generation, and production of electricity. The generating plant was in Idaho from where transmission lines were carried over the boundary into Utah and directly to various consumers in Utah. The Power Company contended that the process of generating electricity and transmitting it across the boundary to consumers in Utah was instantaneous, that the electricity generated from the mechanical force at the water falls could not be stored but of necessity had to be transmitted as soon as it was generated, and that the tax was therefore levied upon interstate commerce. It was contended by the State that, although the transmission to the point of consumption in Utah, was almost instantaneous with the generating of the electricity at the waterfall in Idaho, the mechanical generation of the electricity is a separate and distinct act of production without regard to the subsequent transmission and that the conversion of power into electricity was completed in the generator before it was carried to the transformer and thence transmitted to the consumer. The State contended that the tax was upon the generating or production of electricity and not upon the transmission thereof. This Court sustained the position of the State although there was "no appreciable lapse of time between the generation of the product and its transmission . . . "

This Court in so doing said 180:

> "*The manufacture to order of goods* and their immediate shipment to the purchaser furnishes a helpful analogy, notwithstanding the fact that there the successive steps from order to delivery are open to physical observation, while here the succession of events is chiefly a matter of inference—although inference which seems unavoidable. • • •
>
> "The generator and the transmission lines perform different functions, with a result comparable, so far as the question here under consideration is concerned, to the manufacture of physical articles of trade and their subsequent shipment and transportation in commerce. • • • "

Other cases to the same general effect but which it is deemed unnecessary to state in detail are

Heisler vs. Thomas Colliery Co., 260 U. S. 245;
Chassaniol vs. City of Greenwood, 291 U. S. 584;
Federal Compress & Warehouse Company vs. McLean, 291 U. S. 17.

Use of Trailers by Customers or the Ordering of Trailers by Customers For Use In Interstate Commerce Is of No Relevant Consequence.

This proposition would seem not to require more than bare statement. Any needed support will be found in

Edelman vs. Boeing Air Transp. Inc., 289 U. S. 249,

sustaining a tax on the withdrawal of gasoline from storage where the withdrawal was for putting the same in airplanes operating in interstate commerce.

Delaware Lackawanna & Western R. R. Co. vs. Yurkonis, 238 U. S. 439,

holding a boy engaged in mining coal to be used, transported or sold in interstate commerce was not himself engaged in interstate commerce.

Shanks vs. Delaware Lackawanna & Western R. R. Co., 239 U. S. 556,

holding an employee working in a machine shop in which locomotives used in both interstate and intrastate commerce were repaired who was injured while taking down and putting up fixtures was not engaged in interstate commerce.

Other cases of like general effect are—

Nashville Chattanooga & St. Louis Railway vs. Wallace, 288 U. S. 249;

Industrial Accident Commission v. Davis, 259 U. S. 182.

The Use of Registered Trade Marks Is Referable Solely to Sales and Has No Relevant Relation to the Manufacturing Operations.

Respondent has several registered trade marks. In the applications therefor made in 1924, 1925, 1931 the same were declared to be used in interstate commerce, (Exhibits 9, 10 and 11, R. 121, 122) (Board Finding No. 19 [R. 491]). But this does not thereby constitute its manufacturing operations interstate commerce. As this Court has uniformly declared "commerce succeeds to manufacture and is not a part of it." Trade marks are used to identify a manufacturer's product when sold in competition with competitors' products. The trade mark is not referable to the manufacturing operation but rather identifies the product after the manufacturing operation is completed and when the product is sold in the open market.

Tracing the legislative history of Federal trade mark legislation, the requirement that the applicant show a use of the trade mark in interstate commerce was the only condition and basis upon which congressional action could be predicated, and that use could be established only by goods *sold* in interstate commerce. In declaring the first Federal Trade Mark Act invalid and beyond the power of Congress because it attempted to regulate all trade marks, and not only those used in interstate commerce, the Court among other things said, *Trade Mark Cases,* (supra), 100 U. S. 82, at page 97:

> "So if, when the trade-mark has been registered, Congress has protected its use on *goods sold* by a citizen of one State to another, or by a citizen of a foreign State to a citizen of the United States, it would be seen that Congress was at least intending to exercise the power of regulation conferred by that clause of the Constitution."

Thereafter the next Federal Trade Mark Act was limited only to those applicants who could establish use of their trade marks in interstate commerce. *Werner vs. Searle & Hearth Co.,* 191 U. S. 195, 204. And this use in interstate commerce means use upon a product sold and shipped in interstate commerce. In *Thaddeus Davids Co. vs. Davids,* 233 U. S. 461, the Court said at page 467:

> "This, in substance, prohibits the registration of marks • • • used by dealers in *selling their goods,* which are not valid trade-marks at common law."

See also

Montgomery Ward vs. Sears Roebuck Co., 49 Fed. (2nd) 842, at page 844;

Macaulay vs. Malt Diastase Co., 4 Fed. (2nd) 944, at page 945.

The sale of the Fruehauf trailers in interstate commerce and the use of the trade mark upon the trailers sold in interstate commerce succeed the manufacturing operation. This use of the trade mark in interstate sales does not thereby render the manufacturing operations interstate commerce.

Attaching the Fifth Wheel to Customers' Trucks and Rendering Other Service at Branch Sales Offices Is Work Local in Character. The Manufacturing Operations at the Plant in Detroit are Not Affected Thereby.

Sometimes when a new semi-trailer is sold through a branch sales office and the customer also buys a fifth wheel, the fifth wheel may be attached to the customer's truck tractor by a mechanic employed at the branch office, if the customer desires it (R. 86, 88). For this work there is a small labor charge of between four to six dollars (R. 134). Attaching the fifth wheel to a truck tractor requires no great skill (R. 89, 132, 133). Sometimes when the customer buys a fifth wheel his own mechanic or truckman attaches it to the truck tractor (R. 86). The truckman frequently shifts a fifth wheel from one truck tractor to another and he does the work himself (R. 133).

The fifth wheel is a flat steel plate attached and bolted to the truck tractor, with a circular turn-table horizonally fastened thereto, all in one piece, the circular turntable having an opening in the center. On the front end of the trailer is a flat plate extending horizontally out over the front frame of the trailer. In the center of the lower side of this flat plate on the trailer there is a small knob or king-pin extending downward. This kingpin fits into and through the opening in the fifth wheel

and extends out on the under side of the turn-table plate. On the end of the king-pin is a head or flange which is wider than and extends over the throat of the king-pin. A lever or clamp on the bottom side of the turn-table plate on the fifth wheel fits around the king-pin, which extends through the opening, between the head or flange of the king-pin and the under side of the turn-table plate. A safety device is sometimes used whereby the clamp is bolted down by two bolts and is thus locked securely (R. 132). In another model of the fifth wheel the reverse method of coupling is used. The king-pin is attached to the fifth wheel and extends upwards, and the opening is on the plate on the front end of the trailer. The king-pin then extends through this plate and is fastened by clamps on the top side.

All that is required in installing it on a truck tractor is: to place pieces of wood an inch or more in thickness on each of the members of the chassis frame of the tractor on which the sheet or frame having the fifth wheel mounted thereon as aforesaid is intended to rest. Then such sheet or frame is set thereon. Holes are then drilled through this sheet or frame so as to receive a U-bolt to be placed around the members of the chassis frame of the tractor. Four of these U-bolts are so installed, one at or near each corner of the sheet or frame having the fifth wheel mounted thereon as aforesaid. The nuts on the U-bolts, of course, are tightened up with a wrench.

The Finding of the Board, No. 14 (R. 48), that before most of the Fruehauf Trailers can be used, the Fruehauf fifth wheel must be attached to the customer's truck or tractor, is erroneous and is not supported by evidence. Although there are several different types of fifth wheels manufactured by Respondent and certain advan-

tages thereof are featured in advertising (see Board Exhibit 8, page 112), the fifth wheel coupler manufactured by Respondent fits the coupling unit of most trailers manufactured by other companies and conversely their trailers fit the coupling device on trailers manufactured by Respondent (R. 133, 135). Every time a trailer is sold it is not necessary that a Fruehauf fifth wheel be sold with it. The customer may, and frequently does, have a fifth wheel already on his tractor to which the trailer can be coupled (R. 135).

Where the installation is not a necessary or essential part required in making an interstate sale and does not require the services of a highly skilled technical engineer but may be readily performed by the customer or by general mechanics available locally, as in the case at bar, the service of installation is local in the state in which it is performed and is not a part of an interstate sale.

York Manufacturing Company vs. Colley, 247 U. S. 21. In that case the installation, held to be a necessary part of an "interstate *sale* of the machinery," because it required such highly technical engineering skill of a trained engineer of the Company that it was an essential part of the sale of the machine. It is to be noted in that case that the ice machine sold was a complicated device "guaranteed to produce three tons of ice a day, consisting of gas compression pumps, a compressor, ammonia condensers, freezing tank and cans, evaporating coils, a brine agitator and other machinery and accessories including apparatus for utilizing exhaust steam for making distilled water for filling the ice cans." The installation made under the supervision of the Company engineer consumed three weeks in time and after installation the Company engineer was required by

the contract of sale to submit the machine in operation to a satisfactory test before the sale was consummated.

Similarly, the work of installing large pipe organs in theatres and auditoriums was held to require "not only the highest mechanical skill but a thorough understanding of the methods employed by the manufacturer in the arrangement of mechanical and electrical connections" and among other things required the "installation of high-voltage electrical connections, furnishing and installing the wind trunking between the blower room and the organ chamber, and the furnishing of light, heat, and electric power required for the erecting, tuning, and completion of the instrument." *Aeolian Co. vs. Fischer,* 40 Fed. (2d) 189, 190, 191. Similarly the installation of Aeolian pipe organs as discussed in the case of *Palmer vs. Aeolian Co.,* 46 Fed. (2d) 746, 752, involved in the contract of sale "seven pages of specification . . . It calls for 8972 separate pipes . . . for 430 percussion tones . . . 9505 separate tone producing elements . . . "

Similarly, in the case of *Bay City vs. Fraeier,* 77 Fed. (2d) 570 (Sixth Circuit), the contract of sale of "a complete water works, with intake, power house and filtration plant and all necessary accessories" required the services and supervision of engineers in the erection. Their services were performed over a period of six years and the complexity, highly mechanical skill and precision of this work was emphasized by the Court.

See also the cases below cited each holding the work to be *local and not a part of interstate commerce. Browning vs. City of Waycross,* 233 U. S. 16, involving the installation of lightning rods; *Mandel Brothers vs. O'Neil,* 69 Fed. (2d) 452, 456, involving the installation of hotel equipment and furnishings sold to a hotel; *Andrews Company vs.*

Colonial Theatre Co., 283 Fed. 471 (District Court, Michigan), involving the installation and the fastening of seats in their places to a cement floor in a theatre; *Power Specialty Company vs. Michigan Power Company*, 190 Mich. 699, involving the installation of super heaters; and *Sturtevant Company vs. Leitelt Iron Works*, 196 Mich. 552, involving the sale and installation of a ventilating system. See also *General Railway Signal Co. vs. Commonwealth of Virginia*, 246 U. S. 500.

This work of attaching the fifth wheel is in no wise comparable to the highly skilled service required of a technical engineer in the installation of a complicated ice machine and refrigerating plant which required three weeks to install and test in operation before completion of the sale, or of a water or power house which required six years to erect, or the installation of Aeolian pipe organs which involved the installation of thousands of different parts, and required over a month's work in installation under the supervision of a skilled engineer and musician.

Similarly the ordinary repair work performed by these repairmen at the branch office sales departments and the "change-over" occasionally made when requested by a customer of a tire to a different size or make, or of a brake of a different type or make, or any other work done at the branch repair departments do not render the sale an interstate sale. The same may be said of the services of the few so-called travelling mechanics who supervise the work of the branch sales office repair department.

The Board in respect to mechanical services performed at the sales branches found:

Finding of the Board, No. 13 (R. 48), is that

> "A substantial part of the mechanical services rendered by the branches outside the State of

> Michigan consists of changes in construction, weight, or design. Practically *all trailers* made for the respondent's stock require such changes, and when sales are made from the stock of branch sales offices, the desired changes are made by mechanics employed by the respondent." (Italics furnished).

This finding is absurd and incredible and is not supported by the evidence. Vosler testified that change-overs were only made occasionally where a customer made the request for a change-over at the branch office to a different size or make of tire or to a different type of brake (R. 102). Peterson, one of the discharged employees, indicated in his testimony (R. 461) that he recalled an instance in Akron, Ohio where a few jobs were too heavy and would subject the hauler to too large a weight tax in the state. Some changes were made to reduce the weight about three hundred pounds, or so. In such instances where customers made requests for some change, Peterson testified that it was the "100% policy" at the branches, "especially in stock jobs" to make the change. But from this testimony there can be no proper finding that every stock job requires a complete change in construction, weight or design. To the contrary the only proper and competent finding that can be made from that testimony is that changes are only made in such few instances when requested by the customer and are not necessary in every standard stock job.

The testimony shows that Respondent manufactures forty standard types of trailers to meet the varying requirements of different types of business. These standard models consist of about eight to ten standard chassis with variation of frame, length, type of brake equipment and variation of design of bodies and capacity

(see Physical Exhibit 12, Engineered Transportation, page 12). To suggest that substantial changes in construction, weight and design must be made on every one of these forty standard models of trailers manufactured by Respondent before they may be effectively used is absurd and incredible. Since eighty per cent or more of the trailers manufactured are standard models (R. 101), it is incredible that a manufacturer could profitably manufacture all of these standard models and then require complete change-overs in such major items as changes in construction, weight or design. This Finding, No. 13, of the Board is not supported by evidence, is not plausible and is not credible.

At the time of the hearing there were no assembly operations carried on at any of the sales branches of the Company (R. 81, 102). The operations of the branch repair departments are local to the state in which they are conducted. They are in no wise referable to or a part of the manufacturing operations in the building of the trailer. The services of the repair man at these various branches are all made after the manufacturing is complete and after the trailer has been sold.

B. Not In the "Stream," "Current" or "Flow" of Commerce in the Manufacturing Operations.

The manufacturing operation is not a mere incident in the movement of raw materials or goods from one state through the plant to the ultimate consumer. The consumer does not buy the raw materials which move into the plant. The consumer purchases an entirely different product and this product is the result of the work of the manufacturer. In this involved and complicated manufacturing operation the raw materials and partially

finished materials are converted, fabricated and molded into an entirely different form and state; the manufactured parts are there assembled with other finished parts purchased and the finished trailer is a product altogether different from the materials as of the time they were delivered to the plant.

In the intervening manufacturing operation, the inherent nature and character of the raw materials, partially finished, and even finished, materials are completely changed. The raw materials come to the plant in their rough state. The axles and most parts therefor come to the plant in the form of rough unfinished forgings and castings. There are other raw or rough, unfinished materials required in the manufacture of a trailer. All of these materials are subjected to several hundred different machine operations with different variations. Over two hundred different parts are fabricated and finished in intricate machine operations before they are converted into their final manufactured form and state and are ready for assembly into the chassis of a trailer. Likewise the bodies of trailers are almost completely built from raw, rough and unfinished materials manufactured and converted at the plant. The lumber comes in the form of planks; sheet steel comes in mere strips and sheets. Numerous other materials are used in the building of bodies. The materials purchased come to a complete rest at the plant prior to the manufacturing operation and remain there commingled in the material inventory upwards of one month, and some times as high as three or four months before they reach the manufacturing operation. The finished manufactured trailer, after the manufacturing operation is completed, is entirely different in form and in character and in use from the materials at the time they were delivered to the plant prior to the commencement of the manufacturing operation.

In the charge of the employees and the Union to the Board, it is alleged that:

> "2. Respondent Company is engaged in the manufacture of trailers for trucks and automobiles and is engaged in commerce among the States in its manufacturing plant in Detroit in that its materials come from other States and are manufactured into trailers for shipment into other States; and it is otherwise engaged in interstate commerce" (R. 4, 7).

Likewise in paragraph 2 of the complaint of the Board, it is alleged that Respondent's operations constitute a continuous flow of commerce among the states (R. 10, 18), and in the Concluding Findings of Fact and Conclusions of Law, Item No. 43, of the Decision of the National Labor Relations Board (R. 56), the Board concludes that:

> "the employer-employee relationship which is subject of these complaints arose in connection with an enterprise conducted by the respondent which is a continuous and carefully synchronized combination of purchase, assembly, manufacture, distribution, and sale constituting a great interstate movement, from which local incidents intrastate if taken alone, cannot be separated" (R. 56).

This conclusion of the Board is untenable and unsound. The holding is in utter disregard of the facts and established law. It cannot be justified as the Board has sought to do by the so-called stockyard and grain cases, to-wit, *Swift & Co. vs. United States,* 196 U. S. 375; *Stafford vs. Wallace,* 258 U. S. 495; *Chicago Board of Trade vs. Olsen,* 262 U. S. 1; *Tagg Bros. & Moorehead vs. United States,* 280 U. S. 420.

In *Swift and Company vs. U. S.*, 196 U. S. 375 the Court found that acts by defendants concertedly carried out at the stockyards in Chicago pursuant to practices precedently agreed upon had been done with the object, intent and purpose of unlawfully monopolizing interstate commerce in live stock and fresh meats. The case is sufficiently discussed in the Jones & Laughlin Brief.

The activities of which regulation was upheld in *Stafford vs. Wallace*, 258 U. S. 495 as being within the stream of interstate commerce are sought to be likened to the manufacturing operations of which regulation is here sought to be enforced. But there is no similitude. There the raiser or producer of live stock in the West shipped the live stock to the stock yards at Chicago as a place of market or sale. The raiser or producer still owned the live stock when it arrived at Chicago and was put into the pens for sale. Not only did the raiser or producer then still own the live stock but it was not until then that the raiser or producer began to look for a purchaser. This he did through commission merchants and dealers. The sale at the stockyards after reaching the stockyards was in itself an essential element or step in interstate commerce. The interstate transportation was solely for the purpose of sale after getting to the stockyards,—the stockyards being the well known and generally patronized market. The situation was and is very analogous to that to which the "original package" doctrine is applied. Under that doctrine the sale is a part of interstate commerce. Just so was and is the sale at the stockyards. The foregoing is amply demonstrated by the statements on pages (498), (515) and (518) of the opinion in *Stafford vs. Wallace*.

Chicago Board of Trade vs. Olsen, 262 U. S. 1 is a very similar case to the case last above cited and for similar reasons wholly inapplicable. The following from the

opinion of this Court describes the activities there being regulated—

> "The Chicago Board of Trade is the greatest grain market in the world. Its report for 1922 shows that on that market in that year were made cash sales for some three hundred and fifty millions of bushels of grain, most of which was shipped from States west and north of Illinois into Chicago, and was either stored temporarily in Chicago or was retained in cars and after sale was shipped in large part to eastern States and foreign countries. • • •
>
> "The railroads of the country accomodate themselves to the interstate function of the Chicago market by giving shippers from western States bills of lading through Chicago to points in eastern States with the right to remove the grain at Chicago for temporary purposes of storing, inspecting, weighing, grading, or mixing, and changing the ownership, consignee or destination and then to continue the shipment under the same contract and at a through rate" (p. 33).

It is clear beyond question from the foregoing that what was being regulated was the sale of wheat while it was in the course of movement as wheat in interstate commerce from the grain fields of the West to the mills of the world. That the making of sales of wheat while in such movement was an act directly in the course of interstate commerce could not be doubted. But the regulation sought to reach "future" contracts on which no wheat moving in interstate commerce or otherwise ever would pass in ownership from one person to another. The question was whether the price specified in these "future" contracts had such a direct effect upon or relation to actual sales of real wheat as to be subject to the same regu-

lation as if actual sales. These "future" contracts required performance on or through the Chicago Board of Trade and in form required the delivery of wheat and could in law be satisfied by the delivery of wheat but were not expected to be so satisfied and customarily were not so satisfied but rather by the payment in money on the day specified for performance of the difference between the price specified and the price on the Board on that day of sales of wheat for immediate delivery. It was found that these "future" contracts were of substantially the same effect on the actual sales of real wheat as if they had been intended to result and did ordinarily result in actual change of ownership of real wheat (See pp. 38-39).

In the case of manufacturing, the factories are not mere incidents "in the stream of commerce." The delivery of materials to the factory for the manufacturing process is not to afford a facility for the continuity of interstate movement of these materials from the ultimate growers and raisers of materials to the ultimate consumer. To the contrary, the raw, rough and unfinished materials which are delivered to the plant come to a complete stop and rest prior to the manufacturing operation. In the manufacturing process several hundred different machine operations are involved and the character of the material is completely transformed. The finished trailer manufactured and assembled at the plant is entirely different in utility, purpose and character from the raw materials which were delivered to the plant and remained there for one month and upwards prior to the manufacturing operation. The factory is not in the current of a movement of [illegible]aw or unfinished materials to the ultimate consumer, as in the case of live stock and grain.

The cases of

Arkadelphia Milling Co. vs. St. Louis Southwestern R. R. Co., 249 U. S. 134, and
Oliver Iron Co. vs. Lord, 262 U. S. 172

cited and discussed supra 61, 62 negative any stream of commerce argument.

United Leather Workers International Union vs. Herkert & Meisel Trunk Co., 265 U. S. 457

is closely in point. There was a strike by employees against a manufacturer to prevent the continued manufacture of goods. The manufacturer purchased materials from out of the State for use in the manufacturing operations. The finished goods were designed for shipment on existing orders to points outside the State. The strikers sought to obstruct the manufacturing operation. It was held that this was not a conspiracy to restrain interstate commerce. This Court said (p. 471)—

> "It is true that they were, in this labor controversy, hoping that the loss of business in selling goods would furnish a motive to the complainants to yield to demands in respect to the terms of employment; but they did nothing which in any way directly interfered with the interstate *transportation* or *sales* of the complainants' product."

It would seem that

Carter vs. Carter Coal Co., 298 U. S. 238

should set at final rest any possible contention in respect of the "stream," "current" or "flow" of commerce having any application to such industrial operations as are here under consideration. For it should be obvious upon bare statement that the effect of industrial strife in local

employer-employee relationship is precisely the same both in nature and extent upon interstate commerce distribution whether the course or sequence of activity is

> mining—distribution of product, or
> purchase of materials—manufacture—distribution of product.

Whether or not any activity (e. g., purchasing materials) preceded the local employer-employee relationship has no possible connection with or bearing upon the activity (distribution of product) succeeding such local relationship or the relationship between the local activity (mining or manufacturing) and the succeeding activity (distribution of product).

C. Do Not "Affect Commerce" in the Manufacturing Operations.

Nor Have the Acts of Respondent, As Charged by the Board, Burdened or Obstructed Commerce or the Free Flow Thereof, Nor Will They Tend So To Do.

In its decision, the Board concluded as a matter of law in paragraphs 44, 45 and 46 (R. 56, 57), that

> "any cessation or obstruction of operations at the Respondent's Detroit factory necessarily has a direct, material, and substantial effect in burdening and obstructing commerce and the free flow of commerce between the State of Michigan . . . and other states in which it sells and to which it ships for sale trailers . . ." (Par. 44).

The Board further concluded that

> "the acts of the Fruehauf Trailer Company complained of caused unrest and confusion among the

> employees in the Respondent's Detroit plant, which had the effect of burdening and obstructing commerce and the free flow of commerce between the State of Michigan . . . and other states in which it sells and to which it ships for sale trailers . . ." (Par. 45).

In paragraph 46, the Board further concluded that the acts complained of

> "tended to lead to a labor dispute burdening and obstructing commerce and the free flow of commerce between the State of Michigan . . . and other states in which it sells and to which it ships for sale trailers . . . "

These conclusions of the Board are contrary to well established law. These conclusions, in effect, hold that although the manufacturing operation, in which the employees involved in these proceedings were engaged, in and of itself is purely local in character, nevertheless if a labor dispute were to arise, and if the operations at the factory were shut down as a result of the dispute, that raw materials would not be shipped in to the factory at Detroit and the finished product would not be shipped out, and that this would burden and obstruct commerce and the free flow thereof; that any unrest caused among the production employees, therefore would have the effect of burdening and obstructing commerce and the free flow of commerce, and that any acts which would lead to a labor dispute might tend in the future to burden and obstruct commerce.

United Leather Workers International Union v. Herkert & Meisel Trunk Co., 265 U. S. 457, cited and discussed supra 80 is directly in point.

In the two cases of

United Mine Workers v. Coronado Coal Co., 259 U. S. 344, and

Coronado Coal Co. v. United Mine Workers, 268 U. S. 295,

the grounds of action were that the employees had conspired to halt mining operations by strikes and accompanying intimidation and interference with workers. In the first case it was charged that the stopping of mining operations would prevent coal from being shipped in interstate commerce and that therefore the acts were in violation of the Sherman Anti-Trust Act. But this contention was rejected by this Court and the injunction denied. In the second case it was charged that the conspiracy was intended to obstruct the movement of coal already mined and on its way in interstate commerce. The injunction was accordingly granted.

The "intent" or the "necessary effect" of an act or course of action which must be present to bring the act or course of action within the scope of the power of Congress have been well and clearly pointed out by this Court. There is no occasion for controversy or loose language in the discussion of the same.

The statement in the first *Coronado* case is the most definite, has not been departed from and it is doubtful whether it could be improved. The statement there was—

> "intended to restrain commerce • • • or has necessarily such a direct, material and substantial effect to restrain it that the intent reasonably must be inferred" (p. 410).

"Necessary" is not to be separated from "direct." Of an act or course of action there are many incidental

results, just as there are many direct results. That the former follow just as uniformly or inevitably and are of as extensive consequence or effect as the latter does not convert the former into the latter. The three building cases well exemplify this—

Industrial Association v. United States, 268 U. S. 64;
Bedford Cut Stone Company v. Stone Cutters' Association, 274 U. S. 37;
Levering & Garrigues Co. v. Morrin, 289 U. S. 103.

In each of these three cases the effect of the course of action complained of upon interstate commerce was to curtail the use in building of materials which to that time had been coming into the State and had been used in building. In the first and third cases this was an incidental result albeit a necessary result of the course of action complained of while in the second case it was a direct result, the course of action complained of being directed solely and exclusively at materials which had been shipped in interstate commerce.

But in the Board Brief in the Jones & Laughlin case the ideas of "intent" and "necessary effect" though recognized and adopted as two bases of what is denominated the control power (p. 39) are left far behind and the ambit of Federal power pushed out to include dealing with any situation which presents "a reasonable likelihood that a strike if it occurred would involve an intent to affect commerce" (p. 14), that is, such "intention might reasonably be expected to develop" (p. 16) and the Board is to determine "the probability of the occurrence of an evil which Congress could control" (p. 34), that is, whether the situation is comparable to and of the same general type as those situations "from

which in the past there had evolved strikes with intent to affect commerce • • • or • • • such • • • intention might reasonably be expected to develop" (p. 40). And then pushing out in another direction basis for the exercise of Federal power is found in "recurring evils which in their totality constitute a burden on interstate commerce" (p. 14), though such evils arise from activities "usually of only local concern" (p. 72), and this is extended to any situation "where the reduction in the supply of the commodity is so large that an intent to burden and obstruct interstate commerce may be inferred" (p. 45), that is, the magnitude of the effect is deemed to bring the same within "necessary effect" (p. 46), though it is recognized that under the decision of this Court in the first Coronado case it would have made no difference if "the natural result would be to keep the preponderant part of the output of the mine from being shipped out of the State" (p. 45).

It would seem that the only answer required to such tenuously attenuated argument is that it is wholly untenable. It presumes to find its basis in the decisions of this Court herein discussed and none other except that next cited. The discussion herein and in the Associated Press and Jones & Laughlin Briefs of those cases fully demonstrates there is no such basis in those decisions. And as for the case of

United States v. Patten, 226 U. S. 525

that arose upon demurrer. The Circuit Court accepted as an allegation of fact "the statement in the counts that interstate trade and commerce would necessarily be obstructed by the operation of the conspiracy" (p. 541). This Court must then and did "accept the Circuit Court's construction of the counts" (p. 535). This Court in disposing

of the matter made a most excellent statement as to what is meant by necessary effect, saying (p. 543):

> "In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result."

From these authorities it is clear that even if the finding of the Board as to the acts of Respondent were true, and even if the acts would result in creating unrest in the plant at Detroit, and this in turn would result in an impairment of the manufacturing operations, the effect on interstate commerce would be too indirect and remote to permit of federal regulation thereof. And in this connection, it is to be noted that the testimony in this case conclusively shows that since the founding of the Company there has never been a strike at the plant which hampered the Company's operations. "We have never had a delay of any kind in our operations, and I do not know just what the result would be" (R. 136). And even if the fact that Respondent pays the highest wages in the trailer industry and has never had any serious labor difficulties which impaired its operations were to be overlooked, nevertheless in view of the foregoing authorities, the position of the Board could not be sustained.

Conclusion on Commerce Question

The National Labor Relations Act cannot constitutionally be applied to manufacturing operations or to production employees therein. To permit of such regulation would be to expand the powers of our limited federal government under the Commerce Clause into a complete centralized state, obliterating all privileges and rights of local self government reserved to the states under the Tenth Amendment. Whether or not the National Labor Relations Act apart from pure legal considerations, would be economically, socially or politically desirable, is subject to serious debate and question. But regardless of its objectives, they cannot be achieved at the price of destroying our constitutional form of government. During the past one hundred and fifty years under our constitutional form of government, conditions of both labor and industry have reached a higher standard, so that even today, after a serious depression, both are on a much higher plane and level than those of all other Nations of the world. To destroy those principles of government is to destroy with one blow the interests of both labor and industry. Our Constitution does not permit it.

POINT III.

The National Labor Relations Act Is Repugnant to and in Violation of the Fifth Amendment to the Constitution of the United States.

This point has two aspects: first, procedural rights and second, substantive rights.

The first is not discussed as such in the other briefs though procedure is discussed in the Jones & Laughlin Brief. The second is discussed in the Associated Press Brief, pages 64-85, and in the Jones & Laughlin Brief. Those discussions are adopted.

Procedure Under National Labor Relations Act Is a Denial of Due Process

The procedure for challenging an order of the National Labor Relations Board is prescribed by the Act in detail in Section 10. This procedure is made exclusive (Section 10, Subdivision (e), last sentence) and "the findings of the Board as to the facts if supported by evidence shall be conclusive," but "the rules of evidence • • • in courts • • • shall not be controlling."

This is not due process in respect of rights asserted under the constitution. In the recent case of *Morgan vs. United States*, 298 U. S. 468, which arose under the Packers and Stockyards Act the Court in its opinion said:

> "When the Secretary acts within the authority conferred by the statute, his findings of fact are conclusive. • • • But, in determining whether in conducting an administrative proceeding of this sort the Secretary has complied with the statutory prerequisites, the recitals of his procedure cannot be regarded as conclusive. Otherwise the statutory conditions could be set at naught by mere assertion.

> "If upon the facts alleged, the 'full hearing' required by the statute was not given, plaintiffs were entitled to prove the facts and have the Secretary's order set aside."

Just prior to the decision last above cited the question was re-examined at length in the case of *St. Joseph Stock Yards vs. United States*, 298 U. S. 38, and the theretofore well established principle of judicial review reaffirmed. That principle is:

Where a right is asserted as arising from or protected by the Constitution of the United States any issue as to such right and its infringement (whether by official or other action) must be open for determination by and must be determined by the judiciary "upon its own independent judgment as to both the law *and the facts.*"

Ohio Valley Water Company vs. Ben Avon Borough, 253 U. S. 287.

Not only does the making of the finding of a legislative, executive or administrative agency "conclusive" deny due process but even to make such finding *presumptively* correct denies due process for no judgment is "independent" which starts with a presumption that the judgment of some one else is correct.

A case involving the employer-employee relation is

Crowell vs. Benson, 285 U. S. 22 (see p. 46).

Here a person claiming to be an employee made claim under the Longshoremen's Compensation Act for injury. The Deputy Commissioner found that the employment relation existed as claimed. The Court on a bill filed by the alleged employer to restrain enforcement of the award heard the matter de novo and found that no employment

relation existed. This was affirmed by this Court with the statement (page 57):

> "The Congress could completely oust the courts of all determinations of fact by vesting the authority to make them with finality in its own instrumentalities or in the Executive Department. That would be to sap the judicial power as it exists under the Federal Constitution and to establish a government of a bureaucratic character alien to our system, wherever fundamental rights depend, as not infrequently they do depend, upon the facts, and finality as to facts becomes in effect finality in law."

This case is more fully stated and further quotation made from the opinion in the Jones & Laughlin Brief.

The Substantive and Substantial Right of Liberty of Contract Is Impinged and Curtailed to Such Extent and in Such Manner That It Is Denied.

In founding our constitutional form of government, a federal government of granted and limited power was created; all other powers of government were reserved to the states, while certain inalienable rights were reposed exclusively in the people. The Constitution was ratified by the states only upon the tacit understanding that the subject-matter of the first ten amendments would promptly be formulated in the form of amendments and then submitted to the States for adoption.* These ten amendments, commonly designated as the "Bill of Rights", were safeguards and guaranties designed to protect both the people and the sovereign states from the dangers of encroachment by the federal government. In the first eight amendments to the Constitution is a guaranty of specific rights guaranteed to the people, and then to further se-

* See Charles Warren on "The Making of the Constitution," pages 768-9, and references contained in footnote 1 on page 769.

cure these rights to the people the Ninth Amendment provided:—

> "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

And the Tenth Amendment provided:—

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Not until there was a general understanding among the people that the first ten amendments, restricting the powers of the federal government, would be adopted would the states ratify the Constitution. In the early case of *Barron vs. Baltimore*, 7 Peters, 243, which involved the question of whether the Fifth Amendment restricted state governments, as it did the federal government, Chief Justice Marshall, himself a strong federalist, said at page 250:

> "But it is universally understood, it is a part of the history of the day, that the great revolution which established the Constitution of the United States, was not effected without immense opposition. Serious fears were extensively entertained that those powers which the patriot statesmen, who then watched over the interests of our country, deemed essential to union, and to the attainment of those invaluable objects for which union was sought, might be exercised in a manner dangerous to liberty. In almost every convention by which the Constitution was adopted, amendments to guard against the abuse of power were recommended. These amendments demanded security against the apprehended encroachments of the general government—not against those of the local governments."

One of the fundamental rights guaranteed to the people with which federal governments may not interfere is contained in the due process clause of the Fifth Amendment in that part which provides:

> "No person shall be . . . deprived of life, liberty or property, without due process of law . . ."

After the Civil War, states likewise were subjected to similar restrictions of due process to safeguard rights of citizens by the adoption of the Fourteenth Amendment to the Constitution. By these provisions of the due process clause, people are guaranteed not only the physical liberty of their persons and homes, but they are secured against governmental interference in the free choice and determination of their individual and private business enterprises and affairs and in the general conduct thereof. Most forceful is the statement of Mr. Justice Peckham in the case of *Allgeyer vs. Louisiana*, 165 U. S. 578, at page 589:

> "The liberty mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties; to be free to use them in all lawful ways; to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary and essential to his carrying out to a successful conclusion the purposes above mentioned."

Employees cannot be compelled to work for an employer contrary to the employee's wishes. Likewise, as will be more particularly discussed hereinafter, the employer is free to employ in his business such employees as he in his

own judgment and discretion chooses, and he may refuse to employ others whom he does not wish to employ. This Court has held that government may not interfere with the rights of employers and employees by fixing wages, *Adkins vs. Children's Hospital,* 261 U. S. 525; *Wolff vs. Industrial Court,* 262 U. S. 522 and 267 U. S. 552, or with the right of a citizen in business to deal with such customers as he chooses, and to refuse to deal with others with whom he does not choose to do business, *Federal Trade Commission vs. Raymond Co.,* 263 U. S. 565; *United States vs. Colgate & Co.,* 250 U. S. 300; Grenada *Lumber Co. vs. Mississippi,* 217 U. S. 433; *In re Louis Wohl, Inc.,* 50 Fed. 2nd, 254. Nor may the government deprive a citizen of the free choice in determining for himself the business in which he will engage, *New State Ice Co. vs. Liebmann,* 285 U. S. 262, nor impose upon the owners of a private business, not affected with a public interest, the price for which their goods, property or services shall be sold, *Ribnik vs. McBride,* 277 U. S. 350; *Williams vs. Standard Oil Co.,* 278 U. S. 235; *Tyson vs. Banton,* 273 U. S. 418.

As was said in the case of *Adkins vs. Children's Hospital,* 261 U. S. 525, supra, at page 546:

> "There is, of course, no such thing as absolute freedom of contract. It is subject to a great variety of restraints. But freedom of contract is, nevertheless, the general rule and restraint the exception; and the exercise of legislative authority to abridge it can be justified only by the existence of exceptional circumstances."

The Court has in a few instances upheld statutes which impinged upon rights secured to individuals under the due process clause. but only under exceptional circumstances and for limited periods of time. *Wilson vs. New,*

supra. And these decisions have gone to the very borderline permitted by law, the Court in *Wolff Packing Co. vs. Court of Industrial Relations,* 262 U. S. 521, supra, saying at page 544:

> "It is not too much to say that the ruling in *Wilson vs. New* went to the border line, although it concerned an interstate common carrier in the presence of a nation-wide emergency and the possibility of great disaster. Certainly there is nothing to justify extending the drastic regulation sustained in that exceptional case to the one before us."

See *Railroad Retirement Board vs. Alton Railroad Co.,* 295 U. S. 330, 369.

In the case at bar, the unfair labor practices charged against Respondent may be summarized from the four typical allegations applied to all of the seven employees involved in these proceedings, Nos. 7, 8, 9 and 10 (R. 11):

The charge is that Respondent discharged and refuses to reinstate Woolery Coonrod for the reason that he

joined and assisted a union
engaged in concerted activity for collective bargaining

and that Respondent in so doing did

interfere with, restrain and coerce its employees in the exercise of rights guaranteed by the Act
discriminate in regard to hire and tenure of employment
discourage membership in a union.

By virtue of the discharge of the seven employees involved in these proceedings, the Board in its complaint concludes that these acts constituted a violation of Section 8, subdivisions (1) and (3) of the Act. Denying the charges of the Board, Respondent made answer as quoted

supra 15 which was supported by testimony as stated on the same page.

For the purpose of this point the charges of the Board are to be considered as upon demurrer to a bill of complaint. The factual determination of the correctness of these charges and of the Findings of the Board in relation thereto are not to be considered.

One of the fundamental rights guaranteed under the due process clause is the right of an employer in the operation of his business to freely contract for such services and labor as he in his sole discretion believes to be to the best interest of his business. If Respondent in the exercise of this right, discharged the seven employees involved in these proceedings solely because they were members of a union, this Court has held that in the conduct of its business it had the right so to do, and that any law which deprives the employer of the right to exercise his discretion in the selection and retention of employees in the operation of his business deprives him of a fundamental right guaranteed to him under the due process clause.

This very question was before this Court in *Adair vs. United States,* 208 U. S. 161. A federal statute pertaining to employees of interstate railroad companies was before the Court for consideration. Many of the provisions of the statute were similar in general context to the provisions of the Act here before the Court. Under the railroad statute considered by the Court in the *Adair* case, it was made a misdemeanor for any railroad employer, or officer or agent thereof, who shall—

> "require any employee, or any person seeking employment as a condition of such employment, to enter into an agreement, either written or verbal, not to become or remain a member of any labor

> corporation, association, or organization; *or shall threaten any employee with loss of employment, or shall unjustly discriminate against any employee because of his membership in such a labor corporation, association, or organization . . .* " (168)

Adair, an agent of an interstate railroad, was indicted under the act because he discharged an employee named Coppage from the service of the Company "*because of his membership in a labor organization*—no other ground for such discharge being alleged" (page 171). He demurred to the indictment, just as Respondent here in this portion of the argument is demurring to the charge made by the Board. Adair contended that the statute was unconstitutional, that it had no reasonable relationship to the regulation of commerce, and that it was in violation of the due process clause of the Constitution. This Court sustained both contentions and declared the Act invalid. In considering the due process clause, the Court said, at page 172:

> "that section, in the particular mentioned, is an invasion of the personal liberty, as well as of the right of property, guaranteed by that Amendment. Such liberty and right embraces the right to make contracts for the purchase of the labor of others and equally the right to make contracts for the sale of one's own labor; . . . .
>
> "it is not within the functions of government—at least in the absence of contract between the parties—to compel any person in the course of his business and against his will to accept or retain the personal services of another, or to compel any person, against his will, to perform personal services for another. The right of a person to sell his labor upon such terms as he deems proper is, in its essence, the same as the right of the purchaser of labor to prescribe the conditions upon which he will accept such labor from the person offering to sell it.

> So the right of the employee to quit the service of the employer, for whatever reason, is the same as the right of the employer, for whatever reason, to dispense with the services of such employee. It was the legal right of the defendant Adair—however unwise such a course might have been—to discharge Coppage because of his being a member of a labor organization, as it was the legal right of Coppage, if he saw fit to do so—however unwise such a course on his part might have been—to quit the service in which he was engaged, because the defendant employed some persons who were not members of a labor organization."

Later in the case of *Coppage vs. Kansas,* 236 U. S. 1, the *Adair* case was again followed. In the *Coppage* case a statute of the State of Kansas made it a misdemeanor for an employer

> "to coerce, require, demand or influence any person or persons to enter into any agreement . . . not to join or become or remain a member of any labor organization or association as a condition of . . . securing employment or continuing in the employment . . . ".

This provision is similar in purpose and general context to Section 8 (1) of the Act in the case at bar. Coppage, superintendent of a railroad, requested a switchman, by the name of Hedges, to sign an agreement "to withdraw from a switchmans' union while in the service of the Frisco Company." Hedges was informed that if he did not sign that he could not remain in the employ of the Company. Hedges refused to sign and refused to withdraw from the labor organization. Coppage thereupon discharged him from the service of the company. The local Kansas Court found Coppage guilty and subjected him to a fine. The judgment was affirmd by the Supreme Court of Kansas, but

was reversed by this Court on the ground that the state statute was repugnant to the due process clause of the Fourteenth Amendment.

It was contended by the State in the *Coppage* case that the question there involved differed from the question before the Court in the *Adair* case. The Court, however, found no essential difference between the cases, saying at page 13:

> "Under the constitutional freedom of contract, whatever either party has the right to treat as sufficient ground for terminating the employment, where there is no stipulation on the subject, he has the right to provide against by insisting that a stipulation respecting it shall be a *sine qua non* of the inception of the employment, or of its continuance if it be terminable at will. It follows that this case cannot be distinguished from *Adair vs. United States.*"

In answer to the argument that an employee's membership in a labor organization does not necessarily affect his duty to his employer, this Court said at page 19:

> "To this line of argument it is sufficient to say that *it cannot be judicially declared that membership in such an organization has no relation to a member's duty to his employer;* and therefore, if freedom of contract is to be preserved, the employer must be left at liberty to decide for himself whether such membership by his employee is consistent with the satisfactory performance of the duties of the employment . . . . Conceding the full right of the individual to join the union, he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man, any more than the same individual has a right to join the union without the consent of that organization . . . . "

The dissenting opinion concedes the correctness of the rule in the *Adair* case, saying at page 32:

> "There is nothing in the statute now under consideration which prevents an employer from discharging one in his service at his will."

but, distinguishes the *Adair* case on the grounds advanced by the state that a state by statute may declare it to be contrary to public policy to require a person to forego rights he may wish to exercise in the future by agreement, binding his future conduct in advance thereof.

The principle of the *Adair* and *Coppage* cases was later again affirmed in

> *Hitchman Coal & Coke Co. vs. Mitchell*, 245 U. S. 229.

The defendants, a union and its officers, were by intimidation, threats and other means directed against employees of plaintiff's mine, interfering with relations existing between plaintiff and its employees and seeking to compel the unionizing of the mine. The mine superintendent had previously advised the employees that "if any man wanted to become a member of the union he was at liberty to do so, but he could not be a member of it and remain in the employ of the Hitchman Company, that if he worked for the Company he would have to work as a non-union man. To this each man employed gave his assent, understanding that while he worked for the Company he must keep out of the union" (p. 239). This Court in finding for plaintiff said at page 250:

> "*Whatever may be the advantages of 'collective bargaining,' it is not bargaining at all, in any just sense, unless it is voluntary on both sides.* The same liberty which enables men to form unions, and through the union to enter into agreements with

> employers willing to agree, entitles other men to remain independent of the union and other employers to agree with them to employ no man who owes any allegiance or obligation to the union. In the latter case, as in the former, the parties are entitled to be protected by the law in the enjoyment of the benefits of any lawful agreement they may make. This court repeatedly has held that the employer is as free to make non-membership in a union a condition of employment, as the working man is free to join the union, and that this is a part of the constitutional rights of personal liberty and private property, not to be taken away even by legislation, unless through some proper exercise of the paramount police power. *Adair vs. United States*, 208 U. S. 161, 174; *Coppage vs. Kansas*, 236 U. S. 1, 14."

And these cases were again cited with approval in the case of *Adkins vs. Children's Hospital*, 261 U. S. 525.

To the question: May an employer discharge an employee because he becomes or is or insists on remaining a member of a Union? The answer under the *Adair*, *Coppage* and *Hitchman* cases clearly is Yes. But it is said that the National Labor Relations Act forbids and such regulation is valid under or since the decision in

> *Texas & New Orleans Railroad vs. Brotherhood*, 281 U. S. 548.

It is said in effect that an employer may discharge an employee because of "race, color or previous condition of servitude" but not for membership in a union. And that such in effect if not express holding is the *Texas & New Orleans Railroad* case just cited. The *Adair* case is cited with approval in the opinion of the Court in the *Carter* case and the *Texas & New Orleans* case in the separate opinion of the Chief Justice in the *Carter* case. They are

not so cited as being in any wise conflicting. And they are not. The Court in the *Texas & New Orleans* opinion was very careful to say and to say explicitly that the cases were not conflicting—that the principle of the *Adair* and *Coppage* cases was "inapplicable" to the situation presented in the *Texas & New Orleans* case.

This case arose under the Railway Labor Act of 1926. Plaintiff Brotherhood had represented the clerical employees of the Railroad since the organization of the Brotherhood in 1918. In 1923 the Railroad and Brotherhood had made a written agreement covering rates of pay and working conditions. In 1925 the Brotherhood applied to the Railroad for an increase of wages. This was refused by the Railroad and an appeal taken by the Brotherhood to the United States Railway Labor Board. This appeal was pending when the 1926 Act took effect. It was remanded to the parties and thereafter came before the Board of Mediation created by the 1926 Act. Proceedings were had before the Board of Mediation extending through the year 1926 and into 1927.

While the proceedings were so pending the Railroad and its officers (as was alleged in the bill of complaint) had "for the express purpose of interfering with, influencing and coercing the plaintiff railway clerks concerning . . . . the designation of a representative . . . . to act for them in the pending controversy before the United States Board of Mediation" undertook, instigated and encouraged the formation of a so-called company union and various acts were set out and alleged to have had the effect of furthering the purpose aforesaid.

The District Court granted an injunction saying:

> "I think there is sufficient evidence to justify the Court in the belief that activities have been had on the part of some of the officials of the railroad com-

> pany which have the effect of interfering with or influencing self organization and that a temporary injunction should be granted."

The injunction restrained "interfering with, influencing, intimidating and coercing . . . . with respect to their free and untrammeled right of selecting or designating their representatives" for the purpose above stated.

Thereafter the Railroad and its officers were prosecuted for alleged violation of the injunction and were by the District Court adjudged to be in contempt. The case came before this Court on review of the judgment of contempt and the decree making the injunction permanent.

The Brotherhood in its Brief before this Court said:

> "The Railway Labor Act in the first place does not make it a crime for an employer to hire whom he pleases, or discharge whom he pleases. The Act does not attempt to limit his power of hiring or discharge. The Act provides only that those who *are* his employees shall have the right to designate their own representatives to negotiate with him concerning terms and conditions of employment and be free from any effort on the part of the employer to perpetrate a fraud under the employees . . . (in such negotiation).
>
> "It must be apparent that there is not in issue in the present case the basis of the decision in the *Adair* case, that is, the right of the employer to hire whom he pleases. Nor is there in issue in the present case the basis of the *Coppage* case, that is, the right of the employer to discharge whom he pleases."

The *Texas & New Orleans* case presented a case of what has been long and familiarly known as "abuse of legal process." Nothing more and nothing less. And it was

for this reason that this Court said there was not involved the normal exercise of the right to discharge employees. This is clear from a statement of some of the salient and basic features of the case, namely—

(a) The injunction covered only clerks "on its lines" and expressly excepted those in the general offices, which were at Houston and New Orleans (See foot note p. 556). It thus was limited to clerks engaged directly in interstate commerce.

(b) The acts of the Railroad and its officers complained of in the original bill of complaint as well as the acts which were held to be violative of the injunction were all *subsequent* to the submission to and participation before the Mediation Board *by the Railway.*

(c) "The sort of conduct • • • prohibited" was described by the Court by saying

> "'Interference' with freedom of action and 'coercion' refer to well understood concepts of the law. • • • 'influence' in this context plainly means pressure, the use of the authority or power of either party to induce action by the other in derogation of what the statute calls 'self-organization.' The phrase covers the abuse of relation or opportunity so as to corrupt or override the will, and it is no more difficult to appraise conduct of this sort in connection with the selection of representatives for the purposes of this Act than in relation to well-known applications of the law with respect to fraud, duress and undue influence."

In other words the "interference," "coercion" and "influence" prohibited did not extend to the effect upon employees of the employer making it clearly known (as in the *Coppage* and *Hitchman* cases) that: You cannot remain in the Union and remain in our employ. There had to be

something more and different on the part of the employer than the exercise of a legal right. And the draftsman of the 1926 Act there before the Court had been careful to state in Section 7 that no legal obligation was intended to be created by the Act.

When the Brotherhood applied to the Railroad for an increase of wages the Railroad then had complete freedom to exercise in the normal manner its legal rights. Among those rights was the right to say—We will not deal with you as a Union, we will not bargain collectively, in fact if you remain in the Union you cannot remain in our employ. Had that been said and the clerks remained in the Union and then been discharged that would have been (in the words of the Court) "the normal exercise of the right of the carrier • • • to discharge [its employees] them" and in the further words of the Court "The Railway Labor Act of 1926 does not interfere" therewith.

But instead the Railroad looking to the procedure which Congress had seen fit (in the words of the concurring opinion in the *Carter* case) "to provide for the peaceful settlement of disputes" chose to make use of that procedure and participate in proceedings before the Board of Mediation under that Act. In other words the Railroad made *deliberate* and *voluntary* choice of that procedure as more to its interest than the normal exercise of its undoubted legal rights. Having thus chosen to make use of such procedure the Railroad then sought to pervert or abuse such procedure and (in the words of the Brief for the Brotherhood) "perpetrate a fraud upon the employees through making contracts, fixing the terms and conditions of employment, which purport to bind employees who have not given their supposed representatives authority to speak for them, or whose supposed representatives have been

influenced in fact to betray their principals." In other words, accomplish an effect like that which has been known to be improperly done in private litigation such as suborning of witnesses or paying a sum (on the side) to the attorney of the opposite party.

Until the Railroad thus *deliberately* and *voluntarily* chose to make use of the procedure before the Board of Mediation its legal rights were in no wise affected by the Railway Labor Act of 1926. But when the Railroad chose to take the benefits of that procedure it must take the obligations which go therewith among which was the obligation to abstain from any act which would affect the free and untrammeled functioning of the procedure thus provided including so abstaining from "interference, influence or coercion • • • over • • • designation of representatives by the other" party—employees or clerks.

Thus correctly understood the *Texas & New Orleans* case in no wise qualifies, narrows or impinges upon the legal rights of the employer as upheld in the *Adair, Coppage* and *Hitchman* cases.

The National Labor Relations Act goes farther and provides (Section 8, Subdivision 5) that the employer shall bargain collectively and (Section 9, Subdivision a) that such bargaining shall be with the representatives designated by "the majority of the employees" in the bargaining unit. This unit is such as shall be determined by the Board. Neither employer nor employee is given any right in making such determination. In other words, if one or more or forty-nine per cent of the employees desire to bargain singly and individually or in small groups the employer is by the terms of the Act prohibited from bargaining with them. Or if the employer for reasons arising in the conduct of the business desires to bargain with some one

or more or group such bargaining is prohibited. The employer may not however be prohibited from "permitting employees to confer with him" Section 8 (2). If a majority of the employees should become members of the I. W. W. or some organization and the same should be in its tenets or methods repugnant to other employees the employer must nevertheless bargain solely and only with such majority organization and as before pointed out is prohibited (Section 8, Subdivision 3) from discouraging membership in such majority organization. If this legislation stands the employer is deprived of the most substantial of his rights and the guaranty of liberty by the Fifth Amendment is meaningless.

It will be interesting—and should be helpful—to inquire in this connection: at just what point in the development of their business did the Fruehaufs lose their right to say whom they would hire and whom they would retain. Surely when August Fruehauf was in his blacksmith shop working with his own hands shoeing horses and setting tires on wagons he had full right to say how many helpers he would have and who they would be and for what reason they would be let go. When the motor vehicle came along and August Fruehauf conceived the idea that he could make trailers for trucks and tractors—four-wheel trailers for trucks and two-wheel trailers for tractors—and could find a sale for them because they would substantially increase the usefulness and value to the owners of trucks and tractors, that surely did not partake of the nature of a conspiracy to do a wrong. When he further conceived the idea that by so doing he could build up a business into which he could take his sons then growing up and his sons-in-law to be and finally leave to them as an inheritance an established business he did no more than the ordinary prudent citizen endeavors to do. When in the carrying out

of his ideas he began to furnish opportunity for work to a few and then more and still more persons, that was not a wrong, legal or moral, against any individual in particular or society in general. At just what point then or by reason of just what circumstance did he lose the rights with which he began? When in the order of nature he began to decline with advancing years and the boys (sons and sons-in-law) that he took into the business and trained began to take more and more of the responsibility as the business grew and grew until finally a few years back he went to his reward satisfied that he had accomplished something in life and thereupon full responsibility for the business passed to the boys just what wrong against individuals or society had the boys committed that their common and ordinary rights should be curtailed or lost? The boys are in charge and controlling owners of the business today. True an interest therein has been transferred to others in order to get needed capital at times and to induce worthy employees to come into and to stay with the business but the family still has a substantial majority control. The worst that can be said about August Fruehauf and his sons is that he and they followed the old admonition about building a better mouse trap and the world came to his and their door until, as the record shows, the business is the largest of its kind today. But no one had to buy their product and no one had to enter their employ. Nor were they under any duty to furnish employment to any one. At what point then did they lay themselves open to intrusion by absentee labor organizers and to control by an administrative agency armed with the broadest of inquisitorial powers unrestrained by any rules as to the competency or relevancy of the subject of any particular inquiry, and be subject to punishment for resenting it?

The seven employees here involved were employed at will and not under a term contract. The employment could be terminated by either party at any time. In the operation and conduct of its business it was essential that such persons be employed and retained as the management believed would perform their work in a manner consistent with the success and interests of the Company. If in the exercise of its judgment, the selection of employees be wise the Company would profit thereby, and on the other hand if its judgment be unwise, to that extent the business and enterprise would suffer. The risk of the enterprise and any loss suffered therein is borne solely by the employer. For the Government to prescribe whom an employer shall hire and retain in his employ deprives the employer of his right to exercise his own judgment in the operation and conduct of his business, while at the same time he is subjected to the risks and loss thereof. Such a regulation is clearly repugnant to the Fifth Amendment.

The National Labor Relations Act like the acts before the Court in the *Adair* and *Coppage* cases imposes a compulsory and inescapable rule or obligation upon the employer. It is in no sense procedural and limited in its purpose or provisions to safeguarding the functioning of such procedure as was the Railway Labor Act of 1926 before the Court in the *Texas & New Orleans* case. To take as typical the provision of Subdivision 3 of Section (8), namely:

> "It shall be an unfair labor practice for an employer . . . by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization."

This is patently neither more nor less but precisely the same thing as was before the Court in the *Adair* and *Cop-*

page cases. It is a difference in words but not in effect. It provides a rule of substantive law. It overturns theretofore existing substantive rights as declared in the *Adair* and *Coppage* cases and deprives the employer of those rights and is not within the ruling in the *Texas & New Orleans* case.

As was said in the *Coppage* case, 236 U. S. 1, supra (p. 19):

> "If freedom of contract is to be preserved, the employer must be left at liberty to decide for himself whether such membership by his employee is consistent with the satisfactory performance of the duties of the employment. . . . Conceding the full right of the individual to join the union, he has no inherent right to do this and still remain in the employ of one who is unwilling to employ a union man, any more than the same individual has a right to join the union without the consent of that organization. . . . ."

It is obvious that if the right of the employer thus described is to be preserved the exercise thereof will of necessity violate Subdivision 3 of Section (8) of the National Labor Relations Act. This is but stating in the converse that the provisions of Subdivision 3 of Section (8) are violative of the rights of the employer protected by the Constitution.

What was said in the case of *Wolff Packing Co. vs. Court of Industrial Relations*, 267 U. S. 552, 569, in respect to the system of compulsory arbitration invoked by the Kansas Act, might likewise be said in respect to the National Labor Relations Act:

> "The system . . . . which the Act establishes is intended to compel, and if sustained will compel, the owner and employees to continue the business on terms which are not of their making. It will

> constrain them not merely to respect the terms if they continue the business, but will constrain them to continue the business on those terms. . . . . Such a system infringes the liberty of contract and rights of property guaranteed by the due process of law clause of the Fourteenth Amendment. 'The established doctrine is that this liberty may not be interfered with, under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect.' *Meyer vs. Nebraska*, 262 U. S. 390, 399."

The National Labor Relations Act contravenes the Fifth Amendment to the Constitution.

CONCLUSION

The National Labor Relations Act is contrary and subversive to the Constitution. By its provisions, the Congress of the federal government, which the people and the states invested with only granted and limited delegated powers, is attempting to regulate matters of local concern far outside of the scope of its power to regulate interstate commerce and in violation of the Tenth Amendment. Whatever argument may be advanced for a dominant centralized government, which would obliterate the right of local self-government by the states, "it is sufficient to say that the Federal Constitution does not provide for it." Whatever argument may be advanced for governmental control of the private affairs of citizens and of their business and industry, which would make citizens subject to the direction and domination of government in the conduct of their every day lives and affairs, and which would deprive them of the right to exercise their own

individual initiative, judgment and discretion in the conduct of these affairs, our Constitution does not permit it. The Fifth Amendment preserves this right for the people.

Change of times has been advocated as a reason to legislate our Constitution into a nullity. Times may change, but our constitutional form of government has remained constant. Through one hundred and fifty years of changing social and economic life and strife, it has sustained us—while other governments have tottered and other peoples have surrendered themselves to the fate of subjects of an autocratic or totalitarian state.

The National Labor Relations Act strikes at the basic form of our government and rights of our citizens. It, therefore, cannot be sustained.

It is respectfully submitted that the decrees of the Circuit Court of Appeals

(a) vacating and holding for naught, and

(b) dismissing the petition of the Board to enforce the order of the National Labor Relations Board of December 12th, 1935, directed to Respondent be affirmed.

Respectfully submitted,

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Counsel for Respondent.

Nos. 420 and 421

FEB 11
CHARLES ELMOR

IN THE

Supreme Court of the United States

OCTOBER TERM 1936

NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

FRUEHAUF TRAILER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMERICAN FEDERATION OF LABOR, *AMICUS CURIAE*

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IN THE

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NATIONAL LABOR RELATIONS BOARD, *Petitioner*

v.

FRUEHAUF TRAILER COMPANY

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF OF AMICUS CURIAE

The American Federation of Labor represents to this Honorable Court that it is a federation of national and international trade and labor unions and State and central labor bodies. Its members are gravely concerned with the judicial construction of the National Labor Relations Act, and the questions of law arising thereunder which are involved in this case; and by reason thereof it respectfully asks permission to file its brief as *amicus curiae* in support of the constitutionality of the Act and in support of the

validity of the order of the National Labor Relations Board which is involved herein.

STATUTE INVOLVED

This case involves the provisions of the National Labor Relations Act (July 5, 1935, c. 372, s. 16, 49 Stat. 449; 29 U. S. C., ss. 151-166).

The Act creates a National Labor Relations Board, and in section 10 thereof provides administrative and court procedure for the prevention of those "unfair labor practices affecting commerce". Under the authority vested in it by section 6 of the Act, the Board has issued general rules and regulations setting out the procedure through which cases arising under the Act are dealt with by the Board.

OPINION BELOW

The National Labor Relations Board filed a petition in the Circuit Court of Appeals for the Sixth Circuit for the enforcement of an order issued by it in proceedings instituted against the Fruehauf Trailer Company; and the Fruehauf Trailer Company filed its petition in that court seeking a review of the Board's order and praying that it be set aside. That court dismissed the petition of the Board and set aside its order. 85 Fed. (2d) 391.

This Court granted certiorari on November 9, 1936.

PROCEEDINGS OF THE BOARD

The National Labor Relations Board, hereinafter called the Board, upon charges filed by United Automobile Workers' Federal Labor Union No. 19375, directly affiliated with the American Federation of Labor and comprising employes of the Fruehauf Trailer Company, hereinafter called the Company, filed two complaints dated respectively Octo-

ber 23 and 29, 1935, charging the Company with unfair labor practices as defined in section 8, subdivisions (1) and (3) of the National Labor Relations Act, in that the Company interfered with, restrained and coerced its employes in the exercise of the rights guaranteed in section 7 of the Act and discriminated in regard to the hire and tenure of employment of certain employes so as to discourage membership in the union. The cases were consolidated for hearing and were heard by the Board on November 6, 7, and 8, 1935, upon the complaints, the motions to dismiss and the answers, and upon the evidence offered by the parties. The Board found that seven employes had been discharged because of union activities, and that by each and all of the discharges so made and by threats against its employes, the Company had interfered with, restrained and coerced its employes in the exercise of the rights guaranteed in section 7 of the Act. The complaints were sustained; and upon its findings of fact and conclusions of law, the Board ordered the Company to cease and desist (a) from discharging or threatening to discharge employes for joining or assisting the union; (b) from employing detectives for espionage within the union; and (c) from in any other manner interfering with the employes in the exercise of self-organization. The Company also was ordered to reinstate the discharged employes with back pay for time lost.

We shall not attempt here to set out any more fully than this the facts and proceedings before the Board and the Board's findings of fact, all of which are dealt with more fully, we assume, in the Board's brief.

SUMMARY OF ARGUMENT

POINT I. The National Labor Relations Act is a valid enactment under the power of Congress to regulate commerce among the several States.

A. In general, the Act does not exceed the power as heretofore exercised.
B. Specifically, the power of Congress to lift obstructions to interstate commerce is well defined.
C. The findings and policy declared in section 1 of the Act are entitled to weight in determining the Act's validity.
D. That the Act may incidentally affect matters other than those directly entrusted to the Federal government to regulate does not impair its validity.

POINT II. The Act does not contravene the Fifth Amendment.

POINT III. The Act does not contravene the Seventh Amendment.

POINT IV. The provisions of the Act are not an unconstitutional delegation of legislative or judicial power.

POINT V. The Board's findings are entitled to weight; and its order should be enforced.

ARGUMENT

Point I

The National Labor Relations Act Is a Valid Enactment Under the Power of Congress to Regulate Commerce Among the Several States.

A. IN GENERAL, THE ACT DOES NOT EXCEED THE POWER AS HERETOFORE EXERCISED.

The Constitution gives Congress the express power "to regulate commerce . . . among the several States," and it is in this grant of power that Congress found the authority

to enact the National Labor Relations Act—that is to say, if Congress has the power to enact a law with a view toward diminishing labor disputes, that power must be traced specifically to the commerce clause.

It has been said that the whole scheme of the Act is to regulate activities not in or directly affecting commerce, and for this reason the entire Act is unconstitutional. Nothing could be further from an accurate statement of the application of the Act. Its operation is limited. The limitation on its application is the same limitation that Congress has declared in the Act; namely, that labor disputes or their causes must in themselves or by their nature burden or obstruct (affect) commerce among the States.

This Court has not hesitated to sustain the regulatory power of Congress as applied even to manufacturing and to mining, when it was shown that interstate commerce was affected or involved. To argue that manufacture wholly within a State is without the power of Congress to regulate involves the assumption of a broad legal generalization, unfounded in fact, that manufacturing is never commerce and therefore cannot be reached by the regulatory power of Congress.

In the consideration of the power of Congress to regulate commerce, it is correct to say that if an act is within the power specifically conferred upon Congress it is not made any less constitutional because of any indirect effects that it may have, however obvious it may be that it will have those effects; so that even though, in the exercise of its power to regulate commerce, Congress incidentally intrudes upon the power of the States over local matters, this in itself does not render such exercise of legislative power invalid. *A. L. A. Schechter Poultry Corp. et al.*, v. *United States*, 295 U. S. 495 and cases cited on page 544. The primary purpose of the National Labor Relations Act is the promotion of interstate commerce through removing unfair labor practices, which burden the free flow thereof.

The power granted to Congress by the Constitution is "the power to regulate; that is, to prescribe the rule by which commerce is to be governed". *Gibbons* v. *Ogden*, 9 Wheat. 1. This rule has been construed to mean that the legislature has the power to control interstate commerce, "intercourse", in all its branches, undiminished by the fact that it may interfere with the carrying out of the domestic policy of any State, including the right to prohibit.

The commerce clause was fully discussed by Chief Justice Marshall in the famous case of *Gibbons* v. *Ogden, supra*. Gibbons was operating two steamboats between New York and New Jersey, licensed under an act of Congress. The New York law granted to Livingston and Fulton the exclusive right to operate steamboats between the same States. Ogden, the assignee of Fulton and Livingston, secured an injunction in the State court to restrain Gibbons, licensee of Congress, from continuing to operate his boats, Ogden contending that the operation of the commerce clause was limited to the interchange of commodities and that the commerce over which the Federal Government had power did not include navigation. Marshall denied that argument and completely upheld the power of the Federal Government to regulate the whole field of national commerce. The only commerce which Marshall excluded from control under that power is that which, as to any State, is completely internal; and he laid down the doctrine that even though interstate commerce may be completely within a particular State and in addition be absolutely without effect in any other State, Congress may still regulate it if it becomes necessary to do so so as to make effective any one of the powers of the Government.

In the *Minnesota Rate Cases*, 230 U. S. 352 at 398, the Court quoted Marshall and approved the doctrine laid down in *Gibbons* v. *Ogden* and said:

> "The general principles governing the exercise of State authority, when interstate commerce is affected

are well established. The power of Congress to regulate commerce among the several States is supreme and plenary. It is 'complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution.' (*Gibbons* v. *Ogden*, 9 Wheat. 1, 196). * * * "The authority of Congress extends to every part of interstate commerce, and to every instrumentality or agency by which it is carried on; and the full control by Congress of the subjects committed to its regulation is not to be denied or thwarted by the commingling of interstate and intrastate operations. This is not to say that the Nation may deal with the internal concerns of the State, as such, but that the execution by Congress of its constitutional power to regulate interstate commerce is not limited by the fact that intrastate transactions may have become so interwoven therewith that the effective government of the former incidentally controls the latter. This conclusion necessarily results from the supremacy of the national power within its appointed sphere."

It has been so many times held that the Federal Government can regulate intrastate rates, that a discussion of the cases seems unnecessary. See *Dayton-Goose Creek R.* v. *United States*, 263 U. S. 456, *United States* v. *Louisiana*, 290 U. S. 70, *Houston E. & W. T. R.* v. *United States*, 234 U. S. 342, and *Florida* v. *United States*, 292 U. S. 1, wherein the Court has held that the Federal Government can regulate intrastate rates, not only for the purpose of removing discriminations against persons or localities, but also to insure an adequate interstate transportation system.

In *Railroad Commission* v. *C. B. & Q. R. R.*, 257 U. S. 563; *Colorado* v. *United States*, 271 U. S. 153; and *Transit Commission* v. *United States*, 289 U. S. 121, the power of the Interstate Commerce Commission to authorize an interstate railroad to abandon as respects both interstate and intrastate commerce, a part of its line lying wholly within a State, has been upheld notwithstanding the State's objection to

such abandonment. In these cases the actual effect upon interstate transportation has been slight, as in the *Colorado* case, *supra*, where the operating deficit on the branch line under a period of approximately seven years was less than one per cent of the carrier's net railway operating income for those years.

In the *Second Employers' Liability Cases*, 223 U. S. 1, the Court had before it the second Employers' Liability Act, drafted to apply only to injuries sustained by employes while actually engaged in interstate commerce. Objection to the Act was made on the grounds, first, that the abrogation of the fellow-servant rule, the extension of the carrier's liability to cases of death, and the restriction of the defenses of contributory negligence and assumption of risk had no tendency to promote the safety of employes or to advance the commerce in which they are engaged; and second, that the liability imposed for injuries sustained by one employe through the negligence of another, although confined to instances where the injured employe was engaged in interstate commerce, was not confined to instances where both employes were so engaged. The Court overruled both objections and upheld the Act, holding that the provisions of the law inclined to impel the carriers to avoid negligent acts and omissions, and tended to promote the safety of employes and to advance the commerce in which they were engaged; and also that the second objection was based on a mistaken theory in that it treated the *source* of the injury rather than its *effect* on interstate commerce as the criterion of Congressional power.

In *Southern Ry. Co.* v. *United States*, 222 U. S. 20, the Court upheld the Safety Appliance Act requiring safety couplers on cars hauled by an interstate railroad in intrastate traffic, the Court finding a sufficient relation between the conditions of safety appliances used in intrastate traffic with safety in interstate traffic, and declaring that the power of Congress over commerce is plenary

". . . and competently may be exerted to secure the safety of interstate transportation and of those who are employed therein, no matter what the source of the dangers which threaten it."

A. L. A. Schechter Poultry Corp. et al., v. *United States*, 295 U. S. 495, *supra*, has been regarded by some as a reiteration and summary of the law enunciated by this Court on the powers of Congress under the commerce clause of the Constitution. This is not strictly so. What the Court would reaffirm, we believe, is the principle that commodities transported in interstate commerce and having come to rest have passed the point of directly affecting interstate commerce and therefore are not subject to Federal regulation; and decisions of the Court which dealt with a stream of interstate commerce—where goods had come to rest within a State temporarily, later to go forward in interstate commerce—and with the regulation of transactions involved in that practical continuity of movement, were held not applicable in the *Schechter* case. Therefore, although the Court seems to have foreclosed any attempts to include within the definition of "commerce among the several States," goods which have come to rest after having reached their destination, we do not think that it has foreclosed the possibility of including within the scope of Congressional power to regulate, goods manufactured for shipment to other States, nor that in any sense has it denied the power of Congres to regulate or control matters affecting commerce, regardless of where any commodity may have been or may be, if it is involved in such a matter. In the *Schechter* case the Court said:

"In determining how far the Federal Government may go in controlling intrastate transactions upon the ground that they affect interstate commerce, there is a necessary and well-established distinction between direct and indirect effects,"

and pointed out that the distinction between direct and indirect effects has been clearly recognized in the application of the Anti-Trust Acts (26 Stat. 209; 15 U. S. C., ss. 1-7, 15; 38 Stat. 730; 15 U. S. C., ss. 12-27, 44; 18 U. S. C., s. 412; 28 U. S. C., ss. 381-383, 386-390; 29 U. S. C. 52).

The limitation of this decision is clearly fixed in one of its concluding paragraphs:

> "We are of the opinion that the attempt through the provisions of the code to fix the hours and wages of employes of defendants in their intrastate business was not a valid exercise of Federal power."

Where in the Court's condemnation of the attempt to regulate hours and wages can there be found any disapproval of the practical effects of the National Labor Relations Act? In the *Schechter* case the Court pointed out clearly the distinction between matters which directly and indirectly affect commerce. The scope of the *Schechter* decision cannot be made broader than it really is by asserting that it positively forbids indirect regulation of local activities. Certainly it does not make the power of Congress under the commerce clause any less than it has always been.

B. SPECIFICALLY, THE POWER OF CONGRESS TO LIFT OBSTRUCTIONS TO INTERSTATE COMMERCE IS WELL DEFINED.

Congress, in enacting the National Labor Relations Act, has undertaken to do no more with respect to the lifting of obstructions to the free flow of commerce than it has done in the past by means of other legislation, designed to effect the same result.

The Grain Futures Act (42 Stat. 998; 7 U. S. C. ch. 7) regulates interstate commerce and sales of grain for future delivery on boards of trade because it was found that by manipulation they had become a constantly recurring burden and obstruction to that commerce. In *Chicago Board*

of Trade v. *Olsen*, 262 U. S. 1, the validity of the Act was attacked on the ground of attempted regulation of purely intrastate transactions. The Court declined to accept this argument and followed the conclusions reached in *Swift & Co.* v. *United States*, 196 U. S. 375 (discussed *infra*) and cited that case as a "milestone in the interpretation of the commerce clause of the Constitution," and said that that case "recognized the great changes and development of this vast country and drew again the dividing line between interstate and intrastate commerce where the Constitution intended it to be." The Court also quoted with approval from *Stafford* v. *Wallace*, 258 U. S. 495, at 521:

> "Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

This case clearly shows the distinction between what the Court found to be the indirect effects upon commerce considered in the *Schechter* decision, *supra*, and what it here finds to be direct effects upon commerce, and recognized the express declaration of Congress in the Grain Futures Act that

> "Transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein."

It impliedly reiterates a familiar principle of law that if Congress finds a certain condition to exist and if it is within the power of Congress to correct that condition, the Court will not inquire into the effects of the Act of Congress on purely local enterprise, but will recognize the right of Congress to remove obstructions and burdens upon commerce.

In *Swift & Co.* v. *United States, supra,* the Court had under consideration a suit in equity under the Sherman Act which charged a combination of the greater proportion of the dealers in fresh meats throughout the United States with not bidding against each other in the live stock markets of the different States, with bidding up prices for a few days in order to induce cattle men to ship their stock to the stock yards, with fixing prices at which they would sell, restricting shipments of meat when necessary to accomplish that purpose, with establishing a uniform rule of credit to dealers and keeping a blacklist, with making uniform and improper charges for cartage, and with getting less than lawful rates from the railroads to the exclusion of competitors. The defendants demurred on the ground, among others, that the suit was an attempt to regulate intrastate activities. Mr. Justice Holmes, speaking for the Court, said that

> "... although the combination alleged embraces restraint and monopoly of trade within a single state, its effect upon commerce among the states is not accidental, secondary, remote or merely probable. On the allegations the latter commerce, not less, perhaps even more, than commerce within a single state, is an object of attack [Citing cases]. Moreover, it is a direct object, it is that for the sake of which the several specific acts and courses of conduct are done and adopted."

He further stated that commerce among the States is not a technical, legal conception, but a practical one, drawn from the course of business. He pointed out that

> "... when cattle are sent for sale from a place in one state, with the expectation that they will end their transit, after purchase, in another, and when in effect they do so, with only the contribution necessary to find a purchaser at the stock yards, and when this is a typical, constantly recurring course, the current thus existing is a current of commerce among the states, and the purchase of the cattle is a part and incident of such commerce."

In this case the Government argued successfully that although it was true that the individual transactions of the members of the combination took place separately within separate States, these transactions fell within the jurisdiction conferred upon Congress by the commerce clause of the Constitution, because together they created a current or stream of commerce between the States, and that the combination complained of directly affected this stream or current of commerce. The shipments of live stock were made with the express and sole purpose of sale, which, it was asserted, was analogous to the form or condition of the original package in the case of merchandise — the sales made directly by the defendants to dealers and consumers throughout the United States were interstate sales.

In *Duplex Printing Press Co.* v. *Deering*, 254 U. S. 443, it was alleged by the Printing Press Company that organizations of machinists with headquarters at New York City, together with their international association, for the purpose of compelling a manufacturer to unionize its factory in Michigan and to enforce the closed shop, the eight hour day, and the union scale of wages, had entered into a combination to interfere with and restrain the manufacturer's interstate trade by means of a secondary boycott, and that the manufacturer's customers in and near New York were warned, with threats of loss and sympathetic strikes in other trades, not to purchase or install its presses. Other acts were alleged to have been committed by the

union which seriously interfered with the interstate trade of the manufacturer and caused great loss to its business. A suit for an injunction was brought under the Clayton Act and the Court granted the injunction, finding that the acts of the defendants amounted to a combination and conspiracy to restrain interstate commerce. *Cf. United States* v. *Brims*, 272 U. S. 549.

The decision of the Court in the *Duplex* case was followed in *Bedford Cut Stone Co.* v. *Journeymen's Stonecutters' Ass'n.*, 274 U. S. 37, in which the petitioner and twenty-three other corporations, all in the business of quarrying or fabricating Indiana limestone, enjoined the Stonecutters' Association from combining and conspiring together to commit and from committing various acts in restraint of interstate commerce. The Constitution of the Association provided that no member of the Association should work upon stone cut by non-union workers. The Bedford Company insisted upon employing non-union men at its quarry and a general strike was called by the union of all its members throughout the several States. As a consequence stone work generally stopped because of the large number of union stonecutters throughout the States. There was no boycott involved in this case—simply a peaceful strike of members of the union. The Court said (page 54):

> "Whatever may be said as to the motives of the respondents or their general right to combine for the purpose of redressing alleged grievances of their fellow craftsmen or of protecting themselves or their organizations, the present combination deliberately adopted a course of conduct which directly and substantially curtailed, or threatened thus to curtail, the natural flow in interstate commerce of a very large proportion of the building limestone production of the entire country, to the gravely probable disadvantage of producers, purchasers and the public;"

and (page 46):

> "That the means adopted to bring about the contemplated restraint of commerce operated after physical transportation had ended is immaterial [Citing cases]. The product against which the strikes were directed, it is true, had come to rest in the respective localities to which it had been shipped, so that it had ceased to be a subject of interstate commerce * * * In other words, strikes against the local use of the product were simply the means adopted to effect the unlawful restraint"

and then went on to quote *Eastern States Lumber Ass'n.* v. *United States,* 234 U. S. 600 at 613:

> "Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted."

Under the Sherman Act the effect of prices upon interstate trade has been clearly recognized and that Act has been construed to prohibit the fixing of prices by agreement where the effect is unreasonably to restrain interstate commerce. *American Column & Lumber Co.* v. *United States,* 257 U. S. 377; *United States* v. *Trenton Potteries,* 273 U. S. 392. As stated in the former case, it has been repeatedly held by the Supreme Court that any concerted action by any combination of men or corporations to cause, or which in fact does cause, direct and undue restraint of competition in interstate commerce, falls within the condemnation of the Act and is unlawful. In that case the Court quoted with approval from *Northern Securities Co.* v. *United States,* 193 U. S. 197, where it was said that the Act forbade any combination

> ". . . which by its necessary operation destroys or restricts free competition among those engaged in interstate commerce; in other words that to destroy or re-

> strict free competition in interstate commerce was to restrain such commerce."

The *Trenton Potteries* case took note of an agreement among those controlling over eighty per cent of the business of manufacturing and distributing sanitary pottery in the United States to fix and maintain uniform prices and held that such agreement violated the Sherman Act without regard to whether the prices in themselves were reasonable or unreasonable.

In *American Can Co.* v. *Ladoga Canning Co.*, 44 Fed. (2d) 763 (cert. den., 282 U. S. 899), the Court permitted a packing company to recover triple damages under sections 2 and 4 of the Clayton Act because the defendant manufacturer sold cans to a packing company, a competitor of the plaintiff, at discriminatory prices. The Court upheld this application of the statute, although over 99% of the sales to the favored concern were intrastate, upon the ground that the price discrimination in the intrastate sales of cans affected interstate commerce in goods manufactured therefrom. If Congress can control the price a manufacturer pays for his supplies where this is an element in his subsequent interstate competition, it should be able under like circumstances to bring within its control certain features of his relations with his employes.

United States v. *E. C. Knight Co.*, 156 U. S. 1, *Hopkins* v. *United States*, 171 U. S. 578, and *Anderson* v. *United States*, 171 U. S. 604, in which the Court held that since the refining of sugar and the operation of stock yards were local transactions, the Sherman Act would not apply to them, have now in effect been overruled, as the Supreme Court subsequently has not hesitated to apply the prohibitions of the Anti-Trust laws to any activity, whether in itself interstate or intrastate in character, of which the regulation has been considered necessary to carry out the purposes of the law. Likewise, *United Leather Workers* v.

Herkert & Meisel Trunk Co., 265 U. S. 457, may be considered as overruled by the second *Coronado* case and the *Stonecutters'* case, *supra*.

It is clearly apparent from all the cases construing the Anti-Trust Acts that even though the fixing of prices and rates are in themselves purely local matters, nevertheless when their effects are felt in interstate commerce they become a proper subject of control.

In *United States* v. *Ferger*, 250 U. S. 199, the Court sustained a statute making it a crime to forge a bill of lading representing an interstate transaction. The burden on commerce was held to be the unwillingness to purchase valid bills which might be engendered by the circulation of fictitious bills, because if bills of lading are not readily marketable the flow of commerce is likely to be impeded.

Other cases in which transactions, although purely local and preceding actual movement of goods in an interstate journey, are numerous: See *Loewe* v. *Lawlor*, 208 U. S. 274; *United States* v. *Reading Co.*, 226 U. S. 324; *United Fuel Gas* v. *Hallahan*, 257 U. S. 277; *Lemke* v. *Farmers Grain Co.*, 258 U. S. 50. The latter case finds that a business which included the buying of grain in North Dakota for shipment to other States was interstate commerce; that the State statute requiring purchasers of grain to obtain a license and pay a license fee was a direct burden on interstate commerce; and that even when the particular subject remains unregulated by Congress, a State cannot lay burdens on interstate commerce in the guise of police regulations to protect the welfare of her people.

In *Standard Oil Co.* v. *United States*, 283 U. S. 163, the Anti-Trust Act was held applicable to the defendants although the conduct in question related only to the manufacture of gasoline. The Court said:

> "Moreover, while manufacture is not interstate commerce, agreements concerning it which tend to limit

> the supply or fix the price of goods entering into interstate commerce, or which have been executed for that purpose, are within the prohibition of the Act";

and in *Local 167* v. *United States*, 291 U. S. 293, the Court observed:

> "But we need not decide when interstate commerce ends and that which is intrastate begins. The control of the handling, the sales and the prices at the place of origin before the interstate journey begins or in the state of destination where the interstate movement ends may operate directly to restrain and monopolize interstate commerce."

The question of whether strikes directly affect interstate commerce was decided in the *Coronado* cases (259 U. S. 344; 268 U. S. 295), cited in the *Schechter* opinion, *supra*, as showing the difference between direct and indirect effects on commerce. In the first *Coronado* case it was held that a strike did not in itself affect commerce. On the second trial of the case it was proved that the miners intended not merely to stop mining, but also to stop the interstate movement of coal, and so it was held that the strike was a direct burden upon interstate commerce.

In the case of *In re Debs*, 158 U. S. 564, which grew out of the Pullman strike of 1894, this Court established the authority of the Government to intervene in an industrial dispute which threatens to distrupt interstate commerce "whenever the wrongs complained of are such as affect the public at large, and are in respect of matters which by the Constitution are entrusted to the care of the nation."

Tagg Bros. & Moorhead v. *United States*, 280 U. S. 420, arose under the Packers and Stockyards Act (42 Stat. 159; 7 U. S. C., ss. 181-183, 191-195, 201-203, 205-217, 221-229); and upheld the power of Congress to issue orders prescribing charges of persons engaged in buying and selling livestock on a commission basis at stockyards.

Carter v. *Carter Coal Co., et al.*, 298 U. S. 238, wherein the Bituminous Coal Conservation Act of 1935 (49 Stat. 1008) was held unconstitutional, is, we think, inapplicable on the question of the constitutionality of the National Labor Relations Act. We think that the case at bar belongs within the (*sic*) "restricted field" covered by the *Swift & Co.* and kindred cases. Inapplicable, too, are *Kidd* v. *Pearson*, 128 U. S. 1, and other cases on the question of whether State taxes and regulations burden interstate commerce.

The question, and the whole question involved herein as we see it, is whether or not Congress has the power to lift, by legislation, those burdens on interstate commerce which grow out of the stubborn refusal of employers to accord to their employes the same rights with respect to association and mutual banding together for economic well-being which the employers have always had and would not be without.

It is not our intention to burden the Court with an extended discussion of the many cases, or long argument or deductions drawn from those cases; but we do assert that in our opinion the cases preponderantly show that the National Labor Relations Act is a proper exercise of the powers delegated to Congress by the Constitution. The Act is very similar to the Railway Labor Act, which has been declared constitutional by this Court. The only question is how broad a class of employers this Act will apply to. It becomes a question of fact rather than of law to show the effect on commerce among the States of the activities of the great interstate industries, such as steel, automobile, rubber and textiles, built up in converting raw materials or accessories imported from one State into another State where are manufactured or assembled the finished products which are sold in still other States.

C. THE FINDINGS AND POLICY DECLARED IN SECTION 1 OF THE ACT ARE ENTITLED TO WEIGHT IN DETERMINING THE ACT'S VALIDITY.*

Congress, in section 1 of the National Labor Relations Act, has painstakingly enacted its findings and policy with respect to eliminating causes of obstructions to interstate commerce. Ordinarily, an act of Congress is presumed to be valid until the contrary is proved; and the declared purpose of Congress in enacting a law is accorded respect, unless the law obviously lies beyond the power of Congress to enact.

In *Block* v. *Hirsh*, 256 U. S. 135, the Court said:

> "No doubt it is true that a legislative declaration of facts that are material only as the ground for enacting a rule of law, for instance, that a certain use is a public one, may not be held conclusive by the Courts. *Shoemaker* v. *United States*, 147 U. S. 282, 298. *Hairston* v. *Danville & Western Ry. Co.*, 208 U. S. 598, 606.

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* Besides the testimony heard by the Committees of Congress while the measure was pending, they considered: Daugherty, Labor Problems in American Industry (1933), pp. 356, 358; Douglas, An Analysis of Strike Statistics, Journal of American Statistical Association (September, 1923), pp. 866-877; Monthly Labor Review, June, 1932, pp. 1358-1362; W. I. King, The National Income and Its Purchasing Power (National Bureau of Economic Research, 1930), p. 56; United States Commissioner of Labor, Twenty-first Annual Report: Strikes and Lockouts (1906); Strikes and Lockouts in the United States, 1916-32; Monthly Labor Review, June, 1933, pp. 1295-1304; Monthly Labor Review, July, 1934, pp. 68-82; Monthly Labor Review, March, 1935, p. 677 ff.; United States Coal Commission, Labor Relations in the Bituminous Coal Industry (1923); National Association of Manufacturers, Convention Proceedings, 1926, p. 136; Hammond and Jenks, Great American Issues (1921), p. 99; N. Olds, The High Cost of Strikes (1921), p. 210; Fitch, Causes of Industrial Unrest (1924); Commons and Andrews, Principles of Labor Legislation (1920), p. 125; Congressional Record, vol. 78, pt. IV, p. 3443; Report on the Steel Strike of 1919: Commission of Inquiry for the Interchurch World Movement (1920); Report of the Anthracite Coal Strike Commission, United States Bureau of Labor, Bulletin No. 46 (1903); Labor Relations in the Bituminous Coal Industry, United States Coal Commission (1923); Report of the Board of Inquiry for the Cotton Textile Industry (1934) (appointed by President Roosevelt under Public Resolution No. 44). See House Committee Report of June 10, 1935.

In this connection, *see also* the First Annual Report of the National Labor Relations Board, pp. 60-66, and Bulletin No. 1, National Labor Relations Board, Division of Economic Research, August, 1936, pp. 160-161.

Prentis v. *Atlantic Coast Line Co.*, 211 U. S. 210, 227. *Producers Transportation Co.* v. *Railroad Commission*, 251 U. S. 228, 230. But a declaration by a legislature concerning public conditions that by necessity and duty it must know, is entitled at least to great respect. In this instance Congress stated a publicly notorious and almost world-wide fact. That the emergency declared by the statute did exist must be assumed, and the question is whether Congress was incompetent to meet it in the way in which it has been met by most of the civilized countries of the world."

This doctrine is affirmed in even stronger terms in *Stafford* v. *Wallace, supra,* where the Court said (page 512):

> "We have framed the statement of the case, not for the purpose of deciding the issues of fact mooted between the packers and their accusers before the Federal Trade Commission or the Committees on Agriculture in Congress, but only to enable us to consider and discuss the Act whose validity is here in question in the light of the environment in which Congress passed it. It was for Congress to decide, from its general information and from such special evidence as was brought before it, the nature of the evils actually present or threatening, and to take such steps by legislation within its power as it deemed proper to remedy them. It is helpful for us in interpreting the effect and scope of the act in order to determine its validity to know the conditions under which Congress acted."

And also at page 521:

> ". . . it is primarily for Congress to consider and decide the fact of the danger and meet it. This court will certainly not substitute its judgment for that of Congress in such a matter unless the relation of the subject to interstate commerce and its effect upon it are clearly non-existent."

In *Chicago Board of Trade* v. *Olsen, supra,* the statement of the case on page 10 includes the following:

> "The conclusions of Congress expressed in the recital of §3 as to the detriment to interstate commerce from constantly recurring manipulation of sales for future delivery were reached after many years of investigation and examination of witnesses, including the advocates of regulation and those opposed, and men intimately advised in respect to the grain markets of the country."

In that same case the Court quotes *Stafford* v. *Wallace* as quoted above, and says further (page 37):

> "In the act we are considering, Congress has expressly declared that transactions and prices of grain in dealing in futures are susceptible to speculation, manipulation and control which are detrimental to the producer and consumer and persons handling grain in interstate commerce and render regulation imperative for the protection of such commerce and the national public interest therein.
>
> "It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and their effect, that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers and legitimate dealers in interstate commerce in grain and that it is a real abuse."

Later cases amply sustain these opinions of the Court. The State statute considered in *Home Building and Loan Ass'n.* v. *Blaisdell*, 290 U. S. 398, was the Minnesota moratorium law in which the lengthy preamble was by reference incorporated into section 1 of the Act. Regarding the findings of the Act the Court said:

> "The declarations of the existence of this emergency by the legislature and by the Supreme Court of Minnesota cannot be regarded as a subterfuge or as lacking

> in adequate basis. . . . The economic emergency which threatened the loss of homes and lands which furnished those in possession the necessary shelter and means of subsistence was a potent cause for the enactment of the statute."

The findings and policy declared in section 1 of the National Labor Relations Act are nothing new. Why the fact that Congress has laid a basis for the operation of the law in this section should be regarded as an attempt to clothe the purposes of the Act with a declared intent other than the real intent, is hard to understand, in view of earlier decisions of the Court. E. g., in addition to the cases discussed, see *McCullough* v. *Maryland*, 4 Wheat. 316; *United States* v. *Fisher*, 2 Cranch 358; *Legal Tender Cases*, 12 Wall. 457; *Farmers and Mechanics National Bank* v. *Deering*, 91 U. S. 29, 33; *Julliard* v. *Greenman*, 110 U. S. 421; *Ex parte Curtis*, 106 U. S. 371; *Northern Securities Co.* v. *United States*, *supra*; *Ling Su Fan* v. *United States*, 218 U. S. 302; *Board of Trustees of University of Illinois* v. *United States*, 289 U. S. 48.

The refusal of an employer to let his employes set up their own bargaining agency free from his interference in a manufacturing plant may have seemed in former days to have been an intrastate activity; but when it is shown that iron, ore or rubber or other raw materials, or manufactured parts to be used in completing a machine are shipped from one State to a manufacturing plant in another State and there made into finished products which are shipped and sold in still other States and abroad, we have the very essence of what constitutes commerce among the States.

Particularly is the automotive industry responsible for a constant stream or current of commerce between the States. Factories in Michigan are unable to finish an automobile and fill orders in New York and other States because of inability to procure glass from Pennsylvania or rubber from Ohio, because there are labor disputes at plants in

the latter States growing out of the refusal of employers to recognize unions of employes. Automobile assembly plants and automobile body plants in Georgia and Missouri must close down, throwing thousands of employes out of work, because factories in Michigan are closed because of lack of materials from Ohio.

According to the "Monthly Labor Review" for May, 1936 (p. 1301), 31,642 automobile workers were involved in strikes in 1935, with a resultant loss of 335,794 man-days. Of the 2,014 strikes beginning in 1935, the major issues in 47.3 per cent of them were union recognition and other matters pertaining to organization (ibid., p. 1307).

D. THAT THE ACT MAY INCIDENTALLY AFFECT MATTERS OTHER THAN THOSE DIRECTLY ENTRUSTED TO THE FEDERAL GOVERNMENT TO REGULATE DOES NOT IMPAIR ITS VALIDITY.

Unless obviously otherwise and so shown, the declared purpose of an act of Congress must be accepted as the real purpose to be attained in fact.

The purpose of Congress in those acts which attempted to regulate child labor and hours and wages through an exercise of the powers of taxation and over commerce, readily can be distinguished from the purpose of the National Labor Relations Act. In the former acts Congress attempted by indirection to do what it could not do by direction, that is, to regulate the production of articles intended for interstate commerce. It assumed the right to forbid commerce from moving or to allow it to move only at the price of an unreasonable penalty, and thus destroy it as to the particular commodities at which regulation was directed.

The statute considered in the case of *Hammer* v. *Dagenhart*, 247 U. S. 251, prohibited interstate commerce in products of child labor. The Court said that the real purpose of the Act was not the regulation of commerce but the regulation of working hours of children within the States.

An analysis of this case makes the application of the rule of law laid down there very limited. The Court in this opinion asserted the general rule that power to govern commerce does not include the power to prohibit commerce among the States, and in the same breath noted those cases in which laws prohibiting the transportation of lottery tickets, impure foods and drugs, liquor and women had been upheld, justifying those laws on the ground that the use of instrumentalities of interstate commerce were necessary to the accomplishment of harmful results and therefore regulation could only be accomplished by prohibition. The opinion finds that this element was wanting in the *Dagenhart* case and said that the thing wanted to be accomplished by the Child Labor Law was the denial of the facilities of interstate commerce to manufacturers employing children within the prohibited ages. So it is clear that this case, rather than being against the constitutionality of the National Labor Relations Act, does not have a great deal of bearing on it, and as Mr. Justice Holmes in the dissenting opinion in that case reminds us, the power to regulate commerce cannot be cut down or qualified by the fact that it might interfere with the carrying out of the domestic policy of any State, as shown by taxes upheld on oleomargarine, on State banks, on corporations, and also by operation of the Anti-Trust Acts.

The qualification imposed upon Congress in the exercise of its powers is clear -- the intent to regulate commerce as declared by Congress, if valid, will be sustained; but if the avowed purpose of the act is not the direct one, which really is a regulation of local matters, then the Court will not uphold Congress in attempting to do something which it otherwise could not do.

In *McCray* v. *United States,* 195 U. S. 27, the Court had before it the question of the constitutionality of a Federal statute imposing a burden of 10c a pound upon oleomar-

garine colored to look like butter. There is obviously no express power under which Congress can directly prohibit the manufacture of such an article. It was contended in challenging the validity of the law that the tax imposed would prevent the manufacture of oleomargarine; that this was the purpose of the law; and that therefore the statute was unconstitutional. The Court denied this argument and held that the manufacture of oleomargarine is a legitimate subject of excise tax and that the Court itself had no authority to inquire into the motive with which Congress imposes a tax. In other words, the Court found Congress had the power to legislate on the subject absolutely and irrespective of any effects.

If an exercise of a power incidentally confers upon Congress a power in the nature of a police power, it has been decided many times that this does not affect the validity of the act, if the act is a proper exercise of the power. The Act of March 1, 1913, known as the Webb-Kenyon Act (37 Stat. 699; 27 U. S. C., s. 122), operated to give effect to the provisions of a State law, which prohibited the bringing into the State by carriers of intoxicating liquors intended for personal use, by withdrawing from such shipments the immunity of interstate commerce and to forbid the shipment or transportation into the State of liquor intended to be received or possessed there for personal use, contrary to the State statute. The Court found that Congress had the power under the commerce clause to enact this law. *Clark Distilling Co.* v. *Western Maryland Ry. Co.*, 242 U. S. 311.

The Act of June 25, 1910, known as the White Slave Act (36 Stat. 825; 18 U. S. C., ss. 397-404), was attacked and alleged to be unconstitutional on the ground, among others, that it attempted to regulate matters purely under the control of the States. The Act provided against transporting or causing to be transported, or aiding and assisting in obtaining transportation, or persuading or enticing any

woman from place to place in interstate commerce for the purpose of prostitution. The Court held (*Hoke* v. *United States*, 227 U. S. 308) that Congress had the power under the commerce clause to prohibit transportation among the several States; that the power is complete in itself; and that Congress as an incident to it may adopt not only means necessary but convenient to its exercise, and the means may have the quality of police regulations.

Point II

The Act Does Not Contravene the Fifth Amendment.

The right of workers to organize into unions is a legal right possessed without regard to any act of Congress. This right has been recognized by the courts of this country since 1842. What the National Labor Relations Act does is to forbid employers to interfere with this right of their employes to self-organization and the selection by employes of representatives for collective bargaining. This Court in *Texas & New Orleans R. R. Co.* v. *The Brotherhood*, 281 U. S. 548, recognized the right of self-organization which belongs to employes and denied that the employer had any right to interfere with such organization. In that case the Court said without reservation that "the prohibition by Congress of interference with the selection of representatives . . . instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both."

The eloquent championship of the right of an individual worker to bargain for the sale of his own labor against the might of a large corporation is out of place in this discussion. This Act in no wise seeks to take away this right, empty as it is. A study of union wage scales in contrast with non-union wages shows how academic a right individual bargaining is. The States' sanction to combinations

of capital into large corporations, the merger of those corporations into huge holding companies, some with assets in excess of two billions of dollars, and the alliance of these employing concerns into trade associations, have placed employes who rely on individual bargaining completely at the mercy of employers.

The necessity of collective bargaining and the reasons why individual bargaining has virtually disappeared is stated very clearly in *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184. This was a case where a corporation operating a large plant for the manufacture of steel products filed a bill in the Federal Court to restrain the Central Trades Council and certain individual members thereof from carrying on a conspiracy in violation of the provisions of the Clayton Act, to prevent complainant from retaining and obtaining skilled laborers to operate the plant. Chief Justice Taft, in the opinion in that case, recognizing the right of employes to organize into a union for the purpose of dealing with their employer, wrote:

> "They [labor unions] were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The strike became a lawful instrument in a lawful economic struggle or competition between employer

and employees as to the share or division between them of the joint product of labor and capital. To render this combination at all effective, employees must make their combination extend beyond one shop. It is helpful to have as many as may be in the same trade in the same community united, because in the competition between employers they are bound to be affected by the standard of wages of their trade in the neighborhood. Therefore, they may use all lawful propaganda to enlarge their membership and especially among those whose labor at lower wages will injure their whole guild."

More than fifty years ago Congress began a consideration of legislation for the settlement of labor disputes on the railways and in 1888 enacted a law for the voluntary arbitration of railway labor disputes and for the appointment of Presidential commissions to investigate and bring about settlements (25 Stat. 501). Ten years later Congress supplanted this Act with the Erdman Act (30 Stat. 424) which provided for governmental mediation and for voluntary arbitration. The Newlands Act in July 1913 (38 Stat. 103) created a permanent Board of Mediation on the railways. In 1916 the Adamson Act (39 Stat. 721; U. S. C., s. 65) was passed establishing an eight hour day for train operators. The Transportation Act of 1920 followed and under Title III (41 Stat. 469) there was created the Railroad Labor Board with power to hear and decide disputes and provide for the self-organization and collective bargaining by employes. These provisions were sustained in the cases of *Pennsylvania R. R. Co.* v. *United States Railroad Labor Board*, 261 U. S. 72 (1923), and in *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 203 (1925). The Railway Labor Act of 1926 (44 Stat. 577; 45 U. S. C., ch. 8) supplanted Title III of the Transportation Act and, as amended by Congress June 21, 1934 (48 Stat. 1185), and April 10, 1936, is now the law which prohibits railroads from interfering with the right of employes to organize and

has constituted a model for the National Labor Relations Act.*

The principles of labor relations are no different in other industries from what they are on the railroads. Railroads are not the only form interstate commerce takes; it is the products which are shipped over the roads that make interstate commerce, and if the shipment of these products did not take place there would be no need for railroads.

The Railway Labor Act of 1926 as amended, contains provisions declaring that it is the duty of carriers and their employes to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes in order to avoid any interference with operation. The right of employes to organize and bargain collectively is affirmed and it is declared that

> "The majority of any craft or class of employes shall have the right to determine who shall be the representatives of the craft or class"

for the purposes of the Act. Discrimination against union activities and interference with self-organization and the selection of bargaining agents is prohibited, and the carriers are forbidden to assist or contribute funds to labor organizations. The National Mediation Board is created to hear disputes and adjust controversies.

In *Texas & New Orleans R. R. Co.* v. *The Brotherhood, supra,* the right of Congress to guarantee freedom of organization, to prohibit the company-dominated union, and to prevent employers from requiring membership or nonmembership in any union, was upheld in a suit brought under the Railway Labor Act by a labor union to restrain the railroad from interfering with the right of its employes to

* For a concise and complete history of government intervention in labor disputes see National Labor Relations Board, Division of Economic Research, Bulletin No. 1, August, 1936, pp. 33-50.

self-organization and the designation of representatives. The Court in this decision unanimously upheld the lower court, which had decreed that the railroad company should: first, disestablish the company union; second, reinstate the Brotherhood as representative until the employes by secret ballot should make a choice; and third, restore to service certain employes who had been discharged for their activities in behalf of the Brotherhood. Although *Adair* v. *United States*, 208 U. S. 161, held it not within the power of Congress to make it a criminal offense against the United States for a carrier engaged in interstate commerce to discharge an employe simply because of his membership in a labor organization, holding such provision repugnant to the declaration of the Fifth Amendment of the Constitution that no persons shall be deprived of liberty or property without due process of law; and although *Coppage* v. *Kansas*, 236 U. S. 1, declared unconstitutional a state statute declaring it a misdemeanor for an employer to require an employe to agree not to become or remain a member of any labor organization during the time of the employment, such statute being held repugnant to the due process clause of the Fourteenth Amendment, the decisions in these two cases were held inapplicable and the present Chief Justice wrote:

> "We entertain no doubt of the constitutional authority of Congress to enact the prohibition. The power to regulate commerce is the power to enact 'all appropriate legislation' for its 'protection and advancement' (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures 'to promote its growth and insure its safety' (*County of Mobile* v. *Kimball*, 102 U. S. 691, 696, 697); to 'foster, protect, control and restrain' (*Second Employers' Liability Cases*, 223 U. S. 1, 47). Exercising this authority, Congress may facilitate the amicable settlement of disputes which threaten the service of the necessary agencies of interstate transportation. In shaping its legislation to this end, Congress was entitled to take cognizance of actual condi-

tions and to address itself to practicable measures. The legality of collective action on the part of employees in order to safeguard their proper interests is not to be disputed. It has long been recognized that employees are entitled to organize for the purpose of securing the redress of grievances and to promote agreements with employers relating to rates of pay and conditions of work. *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209. Congress was not required to ignore this right of the employees but could safeguard it and seek to make their appropriate collective action an instrument of peace rather than of strife. Such collective action would be a mockery if representation were made futile by interference with freedom of choice. Thus the prohibition by Congress of interference with the selection of representatives for the purpose of negotiation and conference between employers and employees, instead of being an invasion of the constitutional right of either, was based on the recognition of the rights of both. The petitioners invoke the principle declared in *Adair* v. *United States*, 208 U. S. 161, and *Coppage* v. *Kansas*, 236 U. S. 1, but these decisions are inapplicable. The Railway Labor Act of 1926 does not interfere with the normal exercise of the right of the carrier to select its employees or to discharge them. The statute is not aimed at this right of the employers but at the interference with the right of employees to have representatives of their own choosing. As the carriers subject to the Act have no constitutional right to interfere with the freedom of the employees in making their selections, they cannot complain of the statute on constitutional grounds."

This Court in general principles with respect to due process enunciated from time to time has said that the Constitution does not guarantee the unrestricted privilege to engage in a business or to conduct it as one pleases; that the Fifth Amendment does not prohibit government for the public welfare, but merely conditions the exertion of the

admitted power by requiring that the means selected be not unreasonable, arbitrary or capricious and that they have a real and substantial relation to the object sought to be attained.

There are many instances of valid regulation as restricting the right of contract. (See *Nebbia* v. *New York*, 291 U. S. 502, note 25.)

Other cases, in which this and other courts have expressly taken note of the inequality of bargaining power between employer and employe, include *Knoxville Iron Co.* v. *Harbison*, 183 U. S. 13; *McLean* v. *Arkansas*, 211 U. S. 539; *Chicago B. & Q. R. R.* v. *McGuire*, 219 U. S. 549; *Gompers* v. *Buck's Stove & Range Co.*, 221 U. S. 418; *International Text Book Co.* v. *Weissinger*, 160 Ind. 349; *Adair* v. *United States, supra*, and *Coppage* v. *Kansas, supra*.

The right of employes to organize has been recognized by courts in this country for nearly a hundred years and has been confirmed by several decisions of the Supreme Court of the United States. The only thing new in the National Labor Relations Act is that the Railway Labor Act prohibition against railroads interfering with the right of their employes to organize and select representatives for collective bargaining is now extended to all other employers engaged in interstate commerce, or in activities directly affecting it.

The National Labor Relations Act in forbidding an employer to interfere with the right of his employes to self-organization is not invading any established right of that employer. Public welfare demands that employers be restricted in many respects in their dealings with their employes.

Point III

The Act Does Not Contravene the Seventh Amendment.

The order of the Board directs that the Company reinstate with back pay the employes found by the Board to have been discharged in violation of the Act. The objection to this part of the order on the ground that it denies the Company the right to a trial by jury, can have no force in view of the *Texas & New Orleans* case, *supra*, where, by the terms of the District Court decree therein affirmed, the railroad was required to "make whole" the employes discharged for the wages lost by them through their discharge in violation of the Railway Labor Act.

The terms of the order to cease and desist and make whole the employes are equitable in nature and were unknown at common law. With respect to the constitutional provision that the right of trial by jury shall be preserved in suits at common law, it was said in *Shields* v. *Thomas*, 59 U. S. 253, that

> "This provision, correctly interpreted, cannot be made to embrace the established, exclusive jurisdiction of courts of equity, nor that which they have exercised concurrent with courts of law; but should be understood as limited to rights and remedies peculiarly legal in their nature, such as it was proper to assert in courts of law, and by the appropriate modes and proceedings of courts of law."

In a case arising under the National Labor Relations Act, the Circuit Court of Appeals for the Fifth Circuit, stated the law in this respect very clearly (*Agwilines, Inc.* v. *National Labor Relations Board*, decided December 22, 1936):

> "... that as between employer and employee the statute confers no right of action triable by a jury or otherwise.

No provision in it authorizes an employee to make claim. The Act does not purport to confer, it does not confer, private rights. It is only to rights and remedies as they were generally known and enforced at common law by jury trial that the Amendment applies. *Cole* v. *United States*, 91 U. S. 376; *Crowell* v. *Benson*, 285, U. S. 22; *Dimick* v. *Schiedt*, 293 U. S. 474; *Shields* v. *Thomas*, 18 How. 253. The prohibition against interference by employers with self organizations of employees were not only unknown, they were obnoxious to the common law. *Pennsylvania Federation* v. *Pennsylvania R. R. Co.*, 267 U. S. 213. The procedure the statute outlines is not designed to award, the orders it authorizes do not award, damages as such. The proceeding is not, it cannot be made, a private one to enforce a private right. It is a public procedure, looking only to the public ends. The statute has in mind, the maintenance and furthering of industrial amity, and therefore peace, the prevention of industrial war. Viewed as administrative procedure, the proceedings and orders in question present no constitutional difficulties. Thus, there may be, there are, administrative fines. Customs appraisers finally decide values. Licenses which the Government confers it may and does take away, without a jury trial. The procedure provided here looks to, the orders authorize, cease and desist orders to bring unfair practices to an end. That they reprobate and end them from the beginning presents no constitutional difficulty. Ample precedent exists in the Federal Trade Commission Act and the practices and decisions under it, for the authority granted here to the Board upon a finding that unfair labor practices have occurred to order a ceasing and desisting from them. When the practices are found to be the wrongful discharge of employees, and the wrongful failure to restore them to work because of their union activities, it is clear, we think, that a cease and desist order, made operative under the authority of the statute from the time of discharge, is as clearly within constitutional authority as if made effective alone for the future."

Point IV.

The Provisions of the Act are not an Unconstitutional Delegation of Legislative or Judicial Power.

The National Relations Board, like the Federal Trade Commission, is an independent agency exercising no legislative or judicial powers in derogation of the constitutional separation of the functions of government, but only such authority as is subject to complete judicial review. It is an impartial body charged with the enforcement of no policy except the policy of the law. It is no different from the Interstate Commerce Commission or the Federal Communications Commission or the Federal Trade Commission in that respect.

The courts have long since recognized the power of Congress to vest in quasi-judicial administrative tribunals the power to decide matters capable of being acted upon by the judicial power. *Crowell* v. *Benson*, 285 U. S. 22; *Federal Radio Commission* v. *Nelson B. & M. Co.*, 289 U. S. 266. In this Act as in the others mentioned herein, there is no lack of provision for judicial review. *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67; *Federal Trade Commission* v. *Pacific States Paper Trade Ass'n*, 273 U. S. 52; *Federal Radio Commission* v. *Nelson Bros. B. & M. Co.*, *supra*.

Point V

The Board's Findings are Entitled to Weight; and its Order Should be Enforced.

The administrative and enforcement provisions of the National Labor Relations Act (section 10) are very similar to the provisions of the Federal Trade Commission Act (38 Stat. 717; 15 U. S. C., ss. 41-51). Section 10(e) of the Na-

tional Labor Relations Act provides that "the findings of the Board as to the facts, if supported by evidence, shall be conclusive"; and the same provision is also found in the Federal Trade Commission Act. It is settled law that in reviewing findings of the Federal Trade Commission the Court will not make its own appraisal of the testimony, and that the weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn therefrom, are matters for the Commission. *Federal Trade Commission* v. *Algoma Lumber Co., supra; Federal Trade Commission* v. *Pacific States Paper Trade Ass'n, supra.* We may assume that the law is the same with respect to the National Labor Relations Board and its findings.

In the case at bar, the Board's findings with respect to the business of the Company adequately demonstrates a proper application of an act designed to remove the barriers to free-flowing interstate commerce in the industry.

In its decision, the Board states that the Fruehauf Company is the largest manufacturer of commercial trailers in the United States, sells its product through thirty-one branches, in Toronto, Canada, and in 12 states other than Michigan, and also through distributors and dealers in all principal cities of the United States; and that the trailers themselves "are designed for the transportation of merchandise, and are extensively used as instrumentalities of commerce between the states". The Company ships 80% of its products out of Michigan. Its sales in 1934 were $3,318,000. In 1932 there were 1300 Fruehauf trailers in use in 16 States. The Company maintains service stations manned by its own mechanics in 31 cities in the United States. These mechanics install the Company's device known as the "fifth wheel", which in almost every case has to be installed at the point of destination before the Company's trailers can be used with tractors and trucks. *1 Decisions and Orders of the National Labor Relations Board*

68. The Board's findings of fact and conclusions of law, upon which its order is based, followed a full and complete inquiry into the facts and circumstances of the dispute between the Company and its employes who were members of the union. After the facts so found, and on the whole record, we do not believe that this Court will find that the decision of the Board was arbitrary or capricious. The characteristics of the Company's business, considered in connection with its standing in the automotive industry, convincingly show that the Company is subject to the provisions of the National Labor Relations Act.

CONCLUSION

It is respectfully submitted that the judgment of the court below should be reversed; and instructions given for the enforcement of the order of the Board.

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SUPREME COURT OF THE UNITED STATES.

Nos. 420 and 421.—October Term, 1936.

National Labor Relations Board, Petitioner,
420 *vs.*
Fruehauf Trailer Company.

National Labor Relations Board, Petitioner,
421 *vs.*
Fruehauf Trailer Company.

On Writs of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[April 12, 1937.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

In October, 1935, charges against the respondent, Fruehauf Trailer Company, were filed with the National Labor Relations Board. The Board issued its complaints (in two cases) alleging that the Company was engaged in unfair labor practices as described in Section 8, subdivisions (1) and (3) of the National Labor Relations Act. 49 Stat. 449; 29 U. S. C. 151 *et seq.* The practices were said to consist in the discharge of, and threats to discharge, employees because of their affiliation with, and activity in, the labor organization known as United Automobile Workers Federal Labor Union No. 19375.

Notice of hearing was given and the complaints were consolidated. Respondent appeared specially and filed motions to dismiss the complaints upon the ground that the Board was without jurisdiction and that the Act as applied to respondent violated Article I, Section 1, and the First, Fifth, Seventh and Tenth Amendments of the Constitution of the United States. Answers were also filed, denying the charges and reserving the same jurisdictional and constitutional objections. Hearing was had. The Board received evidence upon the jurisdictional issue and, reaffirming an earlier ruling, denied the motions to dismiss. Hearing upon the merits proceeded, and in December, 1935, the Board made its findings and entered its order.

The order required the respondent to cease and desist from discharging, or threatening to discharge, any of its employees because of their joining the Union; from employing detectives for the purpose of espionage within the Union; and from interfering in any other manner with or coercing its employees in the exercise of their right to self-organization for the purpose of collective bargaining or other mutual aid or protection as guaranteed in Section 7 of the Act. The order also required the respondent to cease and desist from discouraging membership in the Union or, in any other labor organization of its employees, by discrimination in regard to hire or tenure of employment. Respondent was directed to offer reinstatement to the employees who had been discharged, to make good their losses in pay, and to post for thirty days notices that it had complied with the order in ceasing the interferences set forth.

The Circuit Court of Appeals dismissed the petition of the Board to enforce its order and set the order aside. 85 F. (2d) 391. This Court granted certiorari.

With respect to the nature of respondent's business the Board made the following findings: Respondent is a corporation organized under the laws of Michigan and is engaged in the manufacture, assembly, sale and distribution of commercial trailers and of trailer parts and accessories. The trailers are vehicles designed for the transportation of merchandise. Respondent's plant is located in Detroit and is the largest concern of its kind in the United States. Respondent maintains 31 branch sales offices in 12 different ent States and has distributors and dealers in the principal cities of the country. A wholly-owned subsidiary operates in Toronto, Canada, where sales are made and considerable assembly work is done with materials obtained from the Detroit plant and in Canada. More than 50 per cent. in value of the materials used by the respondent in manufacture, assembly and shipping during the year 1934 were transported to its Detroit plant from Ohio, Illinois, Indiana and other States. Most of the lumber was transported from southern States and most of the finished parts were transported from States other than Michigan. In 1934, respondent's sales amounted to $3,318,000. Its nearest competitor sold only 37 per cent. of that amount. More than 80 per cent. of its sales are of products shipped outside the State of Michigan through and to other States and to foreign countries. Between January 1 and November 1, 1935, 112 carloads of respondent's products were

shipped to points outside the State of Michigan by railroad and 400 to 500 trailers with accessories were hauled over the highways by motor trucks or tractors to points outside the State. About 30 chassis a day are finished at the Detroit plant of which 80 per cent. are started on their way to destinations outside Michigan. In connection with its interstate sales, respondent furnishes service in the determination of customers' needs and assists in the laying out of special construction requirements. Respondent's sales of trailers in Canada are accomplished through its Canadian subsidiary, and its sales in States other than Michigan are made through its branch sales offices and its distributors and dealers. It is a practice of respondent to consign trailers and parts to distributors and dealers in various States with title retained in respondent until payment is made. The manufacturing and assembly operations at the Detroit plant are essentially connected with and dependent upon the purchase, sales and distribution operations without the State of Michigan. The findings also describe various features of respondent's manufacturing and distributing activities.

With respect to the alleged unfair labor practices, the Board found in substance as follows: The United Automobile Workers Federal Labor Union No. 19375 had been organized among the production and maintenance employees of respondent's Detroit plant and, at the time of the occurrences described, included 177 active members and about 100 members who at one time or another paid dues and did not usually attend meetings. The production and maintenance men at respondent's factory at that time numbered about 400. Early in 1934, respondent hired a detective whose duty it was "to ferret out the union activities of the men" and to keep the respondent informed. This, as the respondent's vice president stated, was to avoid trouble and "to keep a steady flow of business". For purposes of deception, and in order to make the detective eligible for membership in the Union, respondent gave him employment. He joined the Union and became its treasurer. He thus obtained a list of all the members of the Union. He made frequent reports to respondent and with the lists thus obtained respondent's superintendent went about the factory from time to time and warned various employees against union activities. The result of these measures "caused suspicion, unrest and confusion among the employees". A sub-foreman, who was later discharged,

was urged by the superintendent to resign his office in the Union and work with the superintendent "to see that the Union did not gain strength in the plant". The sub-foreman, who interviewed applicants for work, was also instructed by his foreman to learn whether they belonged to a union or believed in unionism and was told that, if they did, they would be objectionable. Respondent "determined to put a stop to all attempts on the part of its factory workers to form an efficient independent bargaining agency and in furtherance of that purpose summarily discharged nine men and threatened three others with discharge". Two of the men were discharged before the Act became effective.

The Board found: "As to the remaining seven men who were discharged, the evidence is found principally in the testimony of the discharged men and other employees. There was no credible or substantial contradiction of this testimony. Our conclusions as to the unfair labor practices charged are reached after a consideration of such evidence and argument as were offered by the respondent, who failed to produce witnesses in its own employ obviously having knowledge of the facts surrounding these discharges, and who in its brief does not argue that its conduct did not constitute unfair labor practices".

The Board reviewed the particular cases of discharge and found that, in each, the employee was discharged because he joined and assisted the Union. The Board found that as a result of the discharges the members of the Union were coerced and restrained from any attempt to organize for collective bargaining; that respondent's acts "led to confusion, resentment, and bitterness among the employees, and tended to lead to a labor dispute burdening and obstructing commerce and the free flow of commerce" between Michigan and other States and foreign countries.

Respondent, on its part, traces the history of the development of its business from its small beginnings, emphasizing the outstanding success of its enterprise. Respondent criticises the finding as to the number of its employees who were members of the Union and states there was no proper basis for the finding that there were only 400 employees in the manufacturing and production departments. Respondent contends that the testimony negatived any showing of labor difficulties and that since its first operations there had not been a strike at the plant which hampered its operations. It is also urged that it was not shown that the discharges

caused a strike at the plant or delay in operations. Respondent points to evidence that only 35 men voted for a strike out of a total of 700 production and manufacturing employees; that only 67 employees voted at the Union meeting and that the suggestion of a strike was voted down. Respondent contends that the testimony of its vice-president showed that, in discharging and laying off men during a slack period of production, the same standard was applied to Union and non-Union men, the determining factors "being the efficiency of the workmen, his cooperation and whether or not he appeared to have the Company's best interests at heart in performing his duties."

Counsel for respondent in their brief state that "Respondent called no witnesses and offered no proof on the question of alleged unfair labor practices, except that brought on cross-examination of discharged employees and from witness Vosler [its vice president] called by the Board on this phase of the case. The Company at all times relied upon its position that the Board had neither jurisdiction over the subject matter of these proceedings, nor over the person of Respondent, that the Act, as a whole, was invalid and the attempted application thereof by the Board to respondent in these proceedings was unconstitutional".

The Board in its findings stated that respondent's witness, Vosler, testified that "he knew none of the facts" surrounding any of the discharges "of his own knowledge" and the Board commented upon the failure of respondent to produce the foreman, or the superintendent, who were in a position to contradict the statement of employees, if they could be contradicted, with respect to the reasons for the discharge.

We have examined respondent's contentions and we are of the opinion that the findings of the Board, with respect to the nature of the respondent's business and the circumstances of the discharges complained of, are supported by the evidence.

The questions relating to the construction and validity of the Act have been fully discussed in our opinion in No. 419, *National Labor Relations Board* v. *Jones & Laughlin Corporation*, decided this day. We hold that the principles there stated are applicable here. The decree of the Circuit Court of Appeals is reversed and the cause is remanded for further proceedings in conformity with this opinion.

It is so ordered.